

TRANSCRIPT OF RECORD.

DISTRICT COURT OF THE UNITED STATES

NOVEMBER TERM, 1922.

No. 457.

THE GROCERY COMPANY, PLAINTIFF IN ERROR,

vs.
THE UNITED STATES OF AMERICA.

APPEAL TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF GEORGIA.

FILED JULY 24, 1922.

(27,216)

(27,814)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 457.

OGLESBY GROCERY COMPANY, PLAINTIFF IN ERROR,

v/s.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF GEORGIA.

INDEX.

	Original.	Print.
Indictment	1	1
Demurrer to indictment.....	6	4
Opinion of the court, Sibley, J.....	7	4
Order overruling demurrer.....	14	9
Plea, verdict, and judgment.....	15	9
Petition for writ of error.....	16	9
Order granting writ of error.....	17	10
Assignment of errors.....	18	10
Supersedeas bond.....	31	19
Order approving bond and granting supersedeas.....	32	19
Bill of exceptions.....	33	20
Testimony of John A. Manget.....	33	20
Mrs. Emma T. Martin.....	46	29
J. E. Raley.....	50	32
R. L. Lamb.....	57	37
J. M. Phelps.....	57	38
T. F. Moore.....	57	38
John A. Manget (recalled).....	58	39

INDEX.

	Original	Print.
Testimony of L. Frankel.....	59	39
J. H. McLauren.....	61	41
Frank Lanier.....	64	43
E. M. Hudson.....	65	44
C. T. Bailey.....	71	48
A. W. Walker.....	72	49
R. W. Davis.....	75	51
Sam Goldstein.....	77	53
H. Y. McCord.....	78	54
William H. H. Phelps.....	81	56
Edward E. Smith.....	82	56
Joseph A. McCord.....	82	57
I. J. Paradise.....	85	59
T. J. Brooke.....	86	60
J. H. Bullock.....	86	60
Sam H. Saltzman.....	87	61
D. F. McClatchey.....	88	62
Documents, telegrams, etc., offered by defendant.....	91	64
Testimony of A. W. Walker (recalled).....	93	65
James Lynch.....	95	66
John A. Manget (recalled).....	99	69
J. L. Patrick.....	100	70
Motion of defendant's counsel to direct verdict.....	101	71
Order approving bill of exceptions.....	110	77
Original writ of error.....	111	78
Order granting writ of error and fixing bond.....	112	78
Citation and service.....	113	79
Præcipe for record.....	115	80
Clerk's certificate.....	117	81

1 UNITED STATES OF AMERICA,
Northern District of Georgia,
Northern Division.

Indictment. No. 3754.

THE UNITED STATES

VS.

OGLESBY GROCERY COMPANY, a Corporation, Fulton County.

In the District Court of the United States in and for the Division and District Aforesaid, at the March Term Thereof, A. D. 1920.

The Grand Jurors of the United States, impaneled, sworn, and charged at the Term aforesaid, of the court aforesaid, on their oath present, that Oglesby Grocery Company, a Corporation, on the 13th day of April, in the year 1920, in the said division of said district, and within the jurisdiction of said court, while doing business as a wholesale grocer in the City of Atlanta, in the State of Georgia, during the existence of a state of war between the United States of America, and the German Government, did then and there unlawfully and wilfully make an unjust and unreasonable charge in handling and dealing in certain necessities, to-wit: granulated sugar. That is to say that at the time and place aforesaid the said Oglesby Grocery Company did sell, at wholesale, to R. L. Lamb, acting for the Lamb & Nix Grocery Co., a retail dealer, one barrel of granulated sugar and did make a charge of twenty cents per pound therefor when and while seventeen and three-fourths cents per pound then and there was a just and reasonable charge for said sugar, and any charge in excess of seventeen and three-fourths ($17\frac{3}{4}$) cents per pound therefor then and there was excessive, unjust and unreasonable, the said Oglesby Grocery Company, lately theretofore having purchased the said sugar from the Savannah Sugar Refining Company at the price of sixteen cents per pound on board cars at Savannah, Georgia, and the transportation charges thereon from Savannah to Atlanta being twenty-six and nine-tenths (26.9) cents per hundred pounds, all of which the said Oglesby Grocery Company then and there well knew.

2 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States,

Second Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Oglesby Grocery Company, a Corporation, on the 13th day of April, in the year 1920, in the said division and district, and within the jurisdiction of said court, while doing business as a wholesale grocer in the City of Atlanta, in the State of Georgia, during the existence of a state of war between the United

States of America and the German Government, did then and there unlawfully and wilfully make an unjust and unreasonable charge in handling and dealing in a certain necessary, to-wit: granulated sugar. That is to say, that at the time and place aforesaid the said Oglesby Grocery Company did sell, at wholesale, to J. M. Phelps, acting for Phelps Brothers Grocery Company, Three hundred and forty-nine (349) pounds of granulated sugar and did make a charge of twenty cents per pound therefor when and while seventeen and three-fourths ($17\frac{3}{4}$) cents per pound then and there was a just and reasonable charge for said sugar, and any charge in excess of seventeen and three-fourths ($17\frac{3}{4}$) cents per pound therefor then and there was excessive, unjust and unreasonable, the said Oglesby Grocery Company, lately theretofore, having purchased the said sugar from the Savannah Sugar Refining Company at the price and charge of sixteen cents per pound on board cars at Savannah, Georgia, and the transportation charges thereon from Savannah to Atlanta then and there being twenty-six and nine-tenths (26.9) per hundred pounds; all of which the said Oglesby Grocery Company then and there well knew.

Contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

3

Third Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Oglesby Grocery Company, a corporation, on the 13th day of April, in the year 1920, in the said division and district, and within the jurisdiction of said court, while doing business as a wholesale grocer in the City of Atlanta, in the State of Georgia, during the existence of a state of war between the United States of America and the German Government, did then and there unlawfully and wilfully make an unjust and unreasonable charge in handling and dealing in a certain necessary, to-wit: granulated sugar. That is to say, that at the time and place aforesaid the said Oglesby Grocery Company did sell, at wholesale, to L. Frankel, acting for Chamberlin-Johnson-Du Bose Company, six hundred and sixty-seven (667) pounds of granulated sugar and did make a charge of twenty cents per pound therefor when and while seventeen and three-fourths ($17\frac{3}{4}$) cents per pound then and there was a just and reasonable charge for said sugar, and any charge in excess of seventeen and three-fourths ($17\frac{3}{4}$) cents per pound therefor then and there was excessive, unjust and unreasonable, the said Oglesby Grocery Company, lately theretofore, having purchased the said sugar from the Savannah Sugar Refining Company at the price and charge of sixteen cents per pound on board cars at Savannah, Georgia, and the transportation charges thereon from Savannah to Atlanta then and there being twenty-six and nine-tenths (26.9) per hundred pounds; all of which the said Oglesby Grocery Company then and there well knew.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

4

Fourth Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Oglesby Grocery Company, a Corporation, on the 13th day of April, in the year 1920, in the said division and district, and within the jurisdiction of said court, while doing business as a wholesale grocer in the City of Atlanta, in the State of Georgia, during the existence of a state of war between the United States of America and the German Government, did then and there unlawfully and wilfully make an unjust and unreasonable charge in handling and dealing in a certain necessary, to-wit: granulated sugar. That is to say, that at the time and place aforesaid the said Oglesby Grocery Company did sell, at wholesale, to T. F. Moore three hundred and fifty (350) pounds of granulated sugar and did make a charge of twenty cents per pound therefor when and while seventeen and three-fourths ($17\frac{3}{4}$) cents per pound then and there was a just and reasonable charge for said sugar, and any charge in excess of seventeen and three-fourths ($17\frac{3}{4}$) cents per pound therefor then and there was excessive, unjust and unreasonable, the said Oglesby Grocery Company, lately theretofore, having purchased the said sugar from the Savannah Sugar Refining Company at the price and charge of sixteen cents per pound on board cars at Savannah, Georgia, and the transportation charges thereon from Savannah to Atlanta then and there being twenty-six and nine-tenths (26.9) per hundred pounds; all of which the said Oglesby Grocery Company then and there well knew.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

A true bill, March Term, 1920.

GEO. R. DONOVAN,

Foreman of Grand Jury.

HOOVER ALEXANDER,

United States Attorney.

5 (On back or cover of Indictment:) No. 3754. United States District Court, Northern Division, Northern District of Georgia. The United States vs. Oglesby Grocery Company, a Corporation, Fulton County. A True Bill. Geo. R. Donovan, Foreman Grand Jury. Filed April 29th, A. D. 1920. O. C. Fuller, Clerk, By Jon Dean Steward, Deputy Clerk. Hoover Alexander, U. S. Attorney. Witnesses: Jno. A. Manget, J. E. Raley, W. E. Phelps, R. L. Lamb, L. Frankel, T. E. Moore, F. D. Jones, K. K. Kelley.

Due and legal service on the within Indictment is hereby acknowledged for the Oglesby Grocery Company, a corporation, and all other and further service is hereby waived, this the 30th day of April, A. D. 1920.

EDGAR WATKINS,

*Attorney for Oglesby Grocery Company,
a Corporation, Defendant Herein.*

Demurrer to Indictment.

And now comes Oglesby Grocery Company in its own proper person into court, and having heard the said indictment and each count thereof read, says that the said indictment and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that it, the said Oglesby Grocery Company, is not bound by the law of the land to answer the same, or any count thereof, and this it is ready to verify; wherefore, for want of sufficient indictment in this behalf, the said Oglesby Grocery Company prays judgment, and that by the court it may be dismissed and discharged from the said premises in the said indictment specified.

EDGAR WATKINS,
WATKINS, RUSSELL & ASBILL,
Attorneys for the Defendant.

Filed in Clerk's Office, May 1st, 1920. O. C. Fuller, Clerk, by
Jon Dean Steward, Deputy Clerk.

Opinion of the Court.

An indictment alleging an unjust and unreasonable charge in handling granulated sugar, a necessary, on April 13th, 1920, has been met by a general demurrer based in the supposed insufficiency of the Act of Congress of August 10th, 1917, regulating the production and distribution of food and fuel in the United States.

1. The war powers of Congress must be held to be equal to whatever is necessary to successfully prosecute a war and maintain the public safety. In modern wars not only armies and peoples, but industries must be mobilized. Every citizen and every dollar must fight. Economic control is as important as military. Disaster and discontent at home are as fundamental and vital as in the field. The powers of Congress, in time of war, are comparable to the police powers of the States in time of peace and equally incapable of fixed limits. No doubt is entertained of the original power to make this legislation.

2. It is contended that the war power has expired, and this exercise of it has fallen by the cessation of war. An armistice was signed with Germany on November 11th, 1918, and active fighting then ceased. The original Act says that its provisions

"Shall cease to be in effect when the existing state of war between the United States and Germany shall have terminated and the fact and date of such termination shall be ascertained and proclaimed by the President."

No such proclamation has been made by the President. Instead, numerous proclamations have been made by him since the armistice in enforcement of this Act. The Congress, itself, on October 22nd,

1919, amended the very section of it here in issue, and on December 31st, 1919, enacted that its provisions as to domestic sugar should continue until June 30th, 1920, and as to other sugar until December 31st, 1920. The Congress and the President are the constitutional judges of states of war and peace and their decisions should be abided in patience by peoples and courts. No such abuse of constitutional power or neglect of constitutional duty is here apparent as to require interference by the courts. *Kentucky Distilling Co., et al. v. United States*, United States Supreme Court, October Term, 1919.

3. More serious is the contention that the provisions of Section 4, upon which the indictment is based, are too indefinite for enforcement. So far as material, they are:

"It is hereby made unlawful for any person . . . to make any unjust or unreasonable rate or charge . . . in handling or dealing in or with any necessities; to conspire or combine with any other person . . . to exact excessive prices for any necessities."

This language, while it discloses a legislative policy, is said to establish no practical standard of conduct, that ideas of reasonableness and excessiveness are so vague and variant that no dealer could tell whether his charges and prices were unlawful except by the subsequent opinion of a jury. A process of law which would condemn one to lose liberty or property for an act without having previously clearly denounced the act as a crime, would not seem to be due process. The subsequent opinion of a jury making that unlawful which could not before have been known to be so, would have all the oppressiveness of an *ex post facto* law. Cases are not wanting in which the very terms "reasonable" and "unreasonable" have been held to render criminal statutes too vague for judicial enforcement. *Tozer v. United States* 52 Fed. 917; *Hayes v. The State*, 11 Ga. App.

9 371, and cases cited. On the other hand, where the statute is within legislative power, courts should be slow to say they cannot understand and enforce its provisions and should exhaust efforts at practical construction before doing so. Some uncertainty is inseparable from law and life. The jury is our established tribunal for solving uncertainties in the application of law to life. The *Magna Charta* declared:

"No free man shall be taken or imprisoned . . . save by the lawful judgment of his peers or the laws of the land."

seeming to express content at a condemnation by either. Probably all common law crimes were originally defined only by the common opinion of the people expressed in the verdicts of juries and judgments of courts. In civil matters today omitted stipulations in contracts are supplied by "reasonable time" or "substantial performance" judged of by a jury. In negligence cases juries are told that while the law lays down a standard of "reasonable and ordinary care and diligence," exactly what acts the defendant should have done or re-

frained from, in the exercise of such diligence, is for their judgment. The defendant keeps or loses his money accordingly. Every code of criminal laws contains many vague definitions of crime. There are none but statutory offenses in Georgia. Many of the standards set up by her penal code use the very term "reasonable" or others as loose, of the application of which the jury must judge, and these statutes are daily upheld and enforced. Section 40 forbids conviction generally where "it satisfactorily appears there was no evil design or intention or culpable neglect." In the law of homicide, Section 65 declares "for if there should have been an interval between the assault or provocation given and the homicide sufficient for the voice of reason and humanity to be heard of which the jury in all cases shall be the judge, the killing shall be attributed to deliberate revenge, and be punished as murder." In dealing with

- 10 homicide justified by fear of felony about to be committed on person or habitation, Section 71 declares "it must appear that the circumstances were sufficient to excite the fears of a reasonable man," an ideal perfectly known only to juries. And Section 75, says of justification "all other instances which stand upon the same footing of reason and justice as those enumerated, shall be justifiable homicide." By Section 103 "opprobrious words and abusive language" may be shown in a case of assault and battery, "which may or may not amount to a justification according to the nature and extent of the battery all of which shall be determined by the jury." Section 922, dealing with arrests without warrant, requires a warrant to be seasonably secured and declares "and no such imprisonment shall be legal beyond a reasonable time allowed for this purpose," on pain of criminal punishment under Section 106. By Section 117 a railway employee "guilty of negligence either by omission of duty or by any act of commission in relation to the matters entrusted to him and about which he is employed from which negligence serious bodily injury occurs" is guilty of a felony. Section 704 makes criminal any person who acquires any money "by any fraud or ill practice in playing at any game," and Section 719 "any person using any deceitful means or artful practice, other than those which are mentioned in this Code, by which an individual, or a firm, or a corporation, or the public is defrauded and cheated." Section 381 makes criminal open lewdness, or any notorious act of public indecency tending to debauch the morals; Section 383, the keeping of a "common, ill-governed and disorderly house, to the encouragement of idleness, etc." Sections 385 and 386 deal with pictures and writings described as "obscene and indecent or tending to debauch the morals;" and 387 makes criminal the use of "obscene, vulgar or profane language" in the presence of a female and indecent or disorderly conduct in the presence of females on passenger-cars, street cars and other places of like character." Similar descriptions of crime are found in the Federal Penal Code, Sections 102, 211 and 212. It is evident that the standards of decency and propriety change with time and place. Under none of these statutes can a man know with certainty how his conduct will be judged by others.

Revised Statutes, Section 1342 makes to be military criminals any officer or soldier who (Art. 20) "behaves with disrespect towards his commanding officer" or who (Art. 23) "does not use his utmost endeavor to suppress a mutiny" or (Art. 25) "uses reproachful or provoking speech or gestures to another." By article 61 conviction may be had for "conduct unbecoming an officer and a gentleman," and by article 62 for "all disorders and neglects to the prejudice of good order and military discipline." Similar provisions occur in Revised Statutes Section 1624, as to the Navy. Convictions under these have been frequently upheld. *Smith v. Whitney*, 116 U. S. 167; *Fletcher vs. United States* 148 U. S. 84; *Swain v. United States*, 165 U. S. 553; *Carter v. McClaughry*, 183 U. S. 365.

The Supreme Court in *Standard Oil Company v. United States*, 321 U. S. 1, 63, and *United States v. American Tobacco Co.*, 221 U. S. 106, 179, 180, held the language of the antitrust Act of 1890 to condemn only "undue or unreasonable" restraints of trade. So construed the language of that Act is quite similar to that now under consideration. In *Nash v. United States*, 229 U. S. 376, it was said:

"Those cases may be taken to have established that only such contracts and combinations are within the Act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade. And thereupon it is said that the crime thus defined by the statute contains in its definition an element of degree as to which estimates may differ, with the result that a man might find himself in prison because his honest judgment did not anticipate that of a jury of less competent men."

Nevertheless the anti-trust Act was upheld as a sufficient criminal statute.

12. Evidently standards may exist in law or fact to which the legislature may refer, and the existence of them is a matter of importance. It must be noted that the Act of August 10th, 1917, is dealing with necessities; articles that, by reason of their necessity, are in common use, dealt in continuously and everywhere. The range of prices and profits in them in time of peace is well established and well understood. The changes that occur in such prices and the causes therefor, are well known. The dealer is not in a novel venture. The descriptive words of the Act are thus defined by Webster: Unjust as "contrary to justice and right; wrongful;" Excessive as "exceeding what is usual and proper;" Unreasonable as "beyond the limits of reason or moderation; immoderate; exorbitant." Immoderate, in turn, means "exceeding just, usual, or suitable bounds." Exorbitant means "deviating from the normal or customary course; going beyond the rule or established limits of right or propriety." The words used by Congress in reference to a well established course of business fairly indicate the usual and established scale of charges and prices in peace times as a basis, coupled with some flexibility in view of changing conditions. The statute may be construed to forbid, in time of war, any departure

from the usual and established scale of charges and prices in time of peace which is not justified by some special circumstance of the commodity or dealer. Evidently increased costs of production and transportation would justify a corresponding increase in price, and necessarily increased expenses in the conduct of business would justify an increased charge for handling; but the existence and sufficiency of the justification is left, in each case, to the courts. This does not differ, in substance, from the situation arising under the Georgia homicide statutes which forbid generally the killing of a human being, but admit of justification and mitigations which are measured finally by the opinion of juries. The dealer

13 knows what was, in time of peace, usual and customary. Within that limit he is safe. He judges of the justification for departure from it at his own risk. That the usual and customary may serve as defining a crime was ruled in *Omaechevarian v. Idaho*, 246 U. S. 343.

Yet further, Section 5 provides:

"The President may in lieu of such unjust and unreasonable * * * charge * * * find what is a just and reasonable charge * * * and in any proceeding brought in any court such order of the President shall be prima facie evidence."

This provision is in connection with a system of licenses which was inaugurated by proclamation as to sugar and is still in force, but it need not necessarily be limited thereto, and such fair price finding made by the President, or his agencies may be available as evidence in a case such as this, not apparently based on Section 5. No force is perceived in the argument that the price finding is utterly void because no hearing is provided. The rates and prices fixed are made only prima facie evidence and a judicial hearing is afforded when the finding is brought into question. The price fixed is a practical guide to the dealer which, if observed, would no doubt in any case protect him from successful prosecution. If he departs from this as well as from what was usual and customary, he does so at the risk of what a court and jury may determine to be unjust and unreasonable or excessive under all the proven circumstances. While the statutory definition is vague, the subject matter would hardly admit of inflexible treatment.

In view of what has been said, it will not be held void for uncertainty, and the demurrer will be overruled.

This 6th day of May, 1920.

SAM'L H. SIBLEY,
U. S. Judge.

Filed in Clerk's Office May 6th, 1920. O. C. Fuller, Clerk, by
Jon Dean Steward, Deputy Clerk.

14

Order Overruling the Demurrer.

Upon considering the demurrer to the indictment and the argument thereon, for the reasons expressed in an opinion filed herewith, the demurrer is overruled.

This 6th day of May, 1920.

SAM'L H. SIBLEY,
U. S. Judge.

Filed in Clerk's Office May 6th, A. D. 1920. O. C. Fuller, Clerk,
by Jon Dean Steward, Deputy-clerk.

15

Plea.

The defendant, Oglesby Grocery Company waives arraignment and pleads not guilty in open Court, this 3 day of June, 1920.

OGLESBY GROCERY COMPANY,
By EDGAR WATKINS,
Att'y.

Verdict.

We, the jury, find the defendant guilty in all four counts this 8th day of June, 1920.

FRANK H. REYNOLDS,
Foreman.

Judgment.

Whereupon, it is considered, ordered, and adjudged by the Court, that the said defendant Oglesby Grocery Company pay a fine of Two Thousand (\$2,000.00) dollars.

In open Court, this 8th day of June A. D., 1920.

SAM'L H. SIBLEY,
U. S. Judge.

16

Petition for Writ of Error.

To the Honorable Samuel H. Sibley,
Judge of the District Court aforesaid:

Now comes Oglesby Grocery Company by attorney and respectfully shows that on the 8th day of June A. D., 1920, a jury duly impaneled found a verdict of guilty against your petitioner, and upon such verdict a final judgment was entered on said 8th day of June A. D., 1920 against your petitioner, adjudging it guilty, and assessing a fine against it in the sum of Two Thousand Dollars (\$2,000.00). Said proceedings was had on an indictment against Oglesby Grocery Company, Petitioner herein, which indictment was based upon Section 4 of an Act to provide further for the national security and defense by encouraging the production, conserving the supply,

and controlling the distribution of food products and fuel, approved August 10, 1917, as amended by the Food Control and the District of Columbia Rents Act, approved October 22, 1919, your petitioner by demurrer, a motion to direct a verdict, by objections to testimony, by requests to charge, and by objections to charges given, having contended that said Act as amended was unconstitutional and void, and in violative of the Constitution of the United States and this being a case in which the constitutionality of a law of the United States is drawn in question.

Your petitioner, feeling itself aggrieved by said verdict and judgment, entered thereon as aforesaid, herewith petitions the Court for an order allowing it to prosecute a Writ of Error to the Supreme Court of the United States under the laws of the United States in such cases made and provided.

Wherefore, premises considered, your petitioner prays that a Writ of Error do issue that an appeal in this behalf to the Supreme Court of the United States sitting at Washington, District of Columbia, for the correction of the errors complained of and herewith assigned, be allowed and that an order be made fixing the amount of security to be given by plaintiff in error conditioned as the law directs, and upon giving such bond as may be required that all further proceedings may be suspended until the determination of said Writ of Error by the Supreme Court of the United States.

17

EDGAR WATKINS,
Attorney for Petitioner in Error,
Fourth National Bank Bldg., Atlanta, Ga.

Order Granting Writ of Error.

Let the Writ of Error above prayed for issue upon the execution of a bond by Oglesby Grocery Company, a Corporation, payable to the United States in the sum of \$4,000.00, such bond, when approved, to act as a supersedeas.

This June 30, 1920.

SAM'L H. SIBLEY,
Judge United States District Court,
Northern District of Georgia.

Filed in Clerk's Office June 30, 1920. O. C. Fuller, Clerk, by C. A. McGrew, Deputy Clerk.

18

Assignment of Errors.

Now comes Oglesby Grocery Company, defendant below, plaintiff in error here, and in connection with its petition for Writ of Error in this cause assigns the following errors which plaintiff in error avers occurred on the trial thereof and upon which it relies to reverse the judgment entered herein, as appears of record.

1.

Because the Court erred in admitting the testimony for that during the trial of said case, Counsel of the United States asked John A. Manget, a witness for the Government who had already testified that he was Chairman of the Fair Price Committee for Georgia, to explain to the Jury just what the plan of action of said Committee was in fixing prices and what efforts were made by the Committee to carry out such a plan.

Counsel for the defendant in the Court below, plaintiff in error here, then and there objected to said question on the grounds that the same was immaterial and irrelevant, that no action of the Fair Price Committee was relevant or binding on the defendant, that said Fair Price Committee had no legal function to perform in relation to the issues of the case on trial and that the bill of indictment did not charge a violation of the price fixed by the Fair Price Committee.

Said objection was overruled by the Court, and the witness permitted to answer and to testify that the Fair Price Committee, after giving public notice through the newspapers, determined that it was a fair profit, prior to April 20, 1920, for Wholesale Grocers to receive in selling sugar 1c. per pound in excess of the invoice cost and freight on the sugar; that on April 20th said Committee increased said margin of profit to 1½c. per pound, and that thereafter, about May 1, 1920, under direction from the Attorney General of the United States, said profit was decreased to 1c. per pound.

To the ruling of the Court in permitting said testimony, defendant in the Court below, plaintiff in error here, then and there excepted and said exception was noted and allowed and said testimony received.

2.

The Court erred in admitting testimony for that during the trial of said case Counsel for the United States asked Miss Emma T. Martin, Secretary of the Fair Price Committee, a witness for the Government, to read in evidence from her notes of what occurred with reference to fixing a price on sugar sold by Wholesale Grocers.

Counsel for the defendant in the Court below, plaintiff in error here, then and there objected to said question and urged the objection that the best evidence was the minutes themselves; that the notes taken therefrom were secondary evidence; and that such testimony was incompetent, immaterial and irrelevant, because the Fair Price Committee had no authority to fix a price binding on the defendant.

Said objection was overruled by the Court, and the witness permitted to testify that the Fair Price Committee has a sub-committee on sugar, composed of a sugar broker, a retail grocer, and a wholesale grocer, which sub-committee recommended to the Fair Price Committee the price at which sugar could be sold by Wholesale

Grocers; that said Fair Price Committee on such recommendation in October, 1919, fixed a profit of 1c. per pound for Wholesale Grocers over the invoice cost and freight; that such profit remained until April 20, 1920, when the profit was fixed at 1½c. per pound, which remained the profit until about May 1, 1920, when under order from the Department of Justice, the profit was reduced to 1c. per pound.

To this ruling of the Court, permitting the testimony of
20 Miss Martin, defendant in the Court below, plaintiff in error here, then and there excepted and said exception was noted and allowed.

3.

During the trial of said case, the Government offered in evidence the written appointment of John A. Manget, a witness for the Government, as a Fair Price Commissioner for Georgia.

Without questioning the execution of the paper constituting the appointment, Counsel for defendant, Oglesby Grocery Company, then and there objected to the introduction of the certificate of appointment, because same was immaterial and irrelevant, and because the Fair Price Committee, of which said Manget was Chairman, had no function under the provisions of the law under which the indictment in this case was found, the functions of said Committee being limited to Section 5, of the Act of Congress of Aug. 10, 1917.

Said objection was overruled by the Court, and the certificate of appointment introduced and read to the Jury.

To this ruling, Counsel for defendant, Oglesby Grocery Company, plaintiff in error here, then and there excepted and said exception was noted and allowed.

4.

Because the Court erred in not charging the Jury, a written request therefor having been properly presented, as follows:

"Neither the so-called profit of 1c. per pound, nor the profit of 1½c. per pound, claimed by the Fair Price Committee to have been fixed as reasonable in the sale of sugar, is valid, there having been no notice to defendant, defendant not having been heard when said charge, or charges were fixed, and the Committee not having considered all the elements of the cost."

21

5.

Because the Court erred in not charging the Jury a written request therefor having been properly presented, as follows:

"You are further charged that because in fixing such charge no consideration was given to value, the charge fixed by the Committee is void."

6.

Because the Court erred in charging the Jury, exception being properly taken, as follows:

"The Government says that a just and reasonable rate had been fixed by the President through the agency of the Attorney General, and also through the agency of the Fair Price Commission at Atlanta. Evidence has been introduced as to what those agencies of the President had determined to be a fair and just rate in handling sugar at wholesale. That evidence has been admitted before you for what you think it is worth. It is not conclusive; it is not a judgment; the Oglesby Grocery Company was never called before either one to have a hearing about so that a trial could be had to fix the thing. It is admitted only as prima facie evidence as to what the Attorney General and the Fair Price Commission decided was just and reasonable."

7.

Because the Court erred in charging the Jury, exception being properly taken, as follows:

"This Section 5 of the Act authorizes the President, through such agencies, to determine what is a just and reasonable profit, the language is not 'a just and reasonable rate,' and it is a little different. Just and reasonable profit,—the word 'profit' might have a good many significations in the minds of different people. One man might say that profit is the difference between what a commodity cost and what it is sold for. That is what I have told you that the rate and charge was. Another man might think that ought not to be considered profit but that profit is only what a man gets clear, after paying all his expenses of every sort in connection with it. Here it becomes important, therefore, in considering the finding, both of the Attorney General and the Fair Price Committee, to know what they thought profit was, and in looking at all the circumstances they dealt with; you have to know that in order to tell how much the compensation ought to be and what they found."

8.

During the trial of said case, Counsel for the defendant, Oglesby Grocery Company, offered in evidence a stipulation between the Attorney for the United States in this case and defendant, that F. M. Spencer, Special Agent in charge representing the Department of Justice on Aug. 28, 1919, mailed out to wholesale grocers in the State of Texas a letter, signed by himself, asking grocers to report, among other things the cost of their commodities, and telling grocers that the cost price expected to be used was the market or replacement value as of the date such report was to be made.

Counsel for the Government objected to the introduction of said letter and statement and urged that the same was immaterial and irrelevant.

Which objection was sustained by the Court, and the Court refused to permit the introduction of said stipulation, letter and statement.

To this ruling, Counsel for the defendant, Oglesby Grocery Com-

pany, plaintiff in error here, then and there excepted, and said exception was noted and allowed.

9.

Because the Court erred in not charging the Jury, a written request therefor having been properly presented, as follows:

23 "The Court directs you that in determining what is a just and reasonable charge to be made in handling and dealing in sugar that you must take the value of the sugar at the time the sale was made by the defendant, and if you find that the value of such sugar had increased since it was acquired by defendant, defendant is entitled to the benefit of such increase. If therefore, you believe from the evidence that the sugar alleged to have been sold in this case was, at the time it was sold, of a market value in excess of that alleged in the indictment or if the Government has failed to prove such value, you will find the defendant not guilty."

10.

Because the Court erred in not charging the Jury, a written request therefor having been properly presented, as follows:

"Value means what the sugar was worth in the market on the day of the sale. In determining what such value was, you will consider offers to sell or buy and market quotations and from all the facts determine what was the present value of sugar on April 13, 1920, and the cost to defendant is not a standard of value."

11.

Because the Court erred in not charging the Jury, a written request therefor having been properly presented, as follows:

"In determining whether or not the defendant sold sugar at an unreasonable rate or charge, you will determine from the evidence first the market value of the sugar at the time it was sold. The fact, if you believe it to be a fact, that the sugar increased in value over what it was bought for, must be considered by you, as you cannot base your verdict solely on the freight charges and amount paid for the sugar."

12.

Because the Court erred in not defining cost and in not giving the request to charge seasonably made in writing, as follows:

24 "Cost, as used in the indictment, and as used throughout this charge means the price paid, or contracted to be paid when the sugar was bought, plus the freight paid to transport said sugar from the place where it was bought to Atlanta, Ga., plus interest on the investment in the sugar, calculated from the time the sugar was paid for until the sale thereof was made; plus the reason-

able and necessary charges in removing and delivering the sugar from the car in which it was shipped to the warehouse of Oglesby Grocery Company; plus the cost of delivering the sugar from the warehouse of Oglesby Grocery Company to the retail merchant to whom it was sold, plus any other charge attributable to the particular purchase of sugar prior to its reaching the warehouse of Oglesby Grocery Company."

13.

Because the Court erred in not charging the Jury, a written request therefor having been properly presented, as follows:

"It is not sufficient evidence of the cost of the sugar for the Government to establish the price paid therefor by Oglesby Grocery Company to the Savannah Sugar Refining Company and the freight paid for transporting said sugar from Savannah to Atlanta."

14.

Because the Court erred in not charging the Jury, a written request therefor having been properly presented, as follows:

"'Wilfully,' as used in the indictment, implies on the part of the defendant, a knowledge of the facts, and a purpose to do wrong. It means a voluntary act with a bad purpose, and without ground for believing the Act to be lawful. Before you can convict the defendant, you must believe from the evidence beyond a reasonable doubt that the defendant knowingly without ground for believing the act to be lawful, with a bad purpose and with a purpose to do wrong, made a sale, or sales, of sugar, as alleged in the indictment."

15.

Because the Court erred in not charging the Jury, a written request having been properly presented, as follows:

"If you believe that defendant's officers who sold the sugar described in the indictment acted in good faith and believed that it had a right to sell sugar at the price it was sold, you will find the
25 defendant not guilty."

16.

Because the Court erred in not charging the Jury, a written request therefor having been properly presented, as follows:

"If the evidence fails to convince you beyond a reasonable doubt that defendant acted wilfully, as 'wilfully' has been defined to you, you will find the defendant not guilty."

17.

Because the Court erred in charging the Jury, exception being properly taken, as follows:

"The word 'wilful' was read to you from the statute. There has been some discussion about that. Wilful means a deliberate purpose to do the thing that was done. It means that there wasn't any mistake about it or any accident that got a man into something he did not intend. It does not mean in this connection that the defendant knew or believed that what he did was just and reasonable. If no point of fact the charge made was unjust and unreasonable, and unjust and unreasonable beyond a reasonable doubt in your opinion, and they deliberately made that charge wilfully, then there would be a wilful exaction of an unjust and unreasonable charge within the meaning of this statute. I call your attention to that meaning of the word 'wilful,' because there has been some discussion about it. Whether or not there was any accident or misfortune or misunderstanding that might render the making of an unjust and unreasonable charge not wilful under the circumstances in this case, it is for you to say, or whether the defendant did make wilfully an unjust and unreasonable rate or charge, as set out in the charge. If so, they are liable to be convicted under this indictment, and if not they are not liable to be convicted, of course."

26

18.

Because the Court erred in excluding testimony for that during the trial of said case, counsel for defendant, Oglesby Grocery Company, in cross-examining J. E. Raley, a witness for the Government, asked said witness if the price of salmon in Atlanta had fallen during the year 1920.

Counsel for the United States objected to said question and urged that the same was immaterial and irrelevant.

Said objection was then and there sustained by the Court, who refused to permit the witness to answer the question.

Counsel for defendant, Oglesby Grocery Company, stated that he expected to prove by the witness that the price of salmon had gone down in Atlanta since January 1, 1920, that wholesale grocers in Atlanta had been compelled to sell salmon at less than cost, and had thereby lost money.

To the ruling of the Court in refusing to permit the witness to testify as stated, counsel for defendant, Oglesby Grocery Company, plaintiff in error here, excepted, and said exception was noted and allowed.

19.

During the trial of said case, counsel for the defendant, Oglesby Grocery Company, offered to prove by E. M. Hudson, A. W. Walker, R. W. Davis, H. Y. McCord, H. L. Singer, Chas. I. Brannan, Jos. A. McCord, Frank Hawkins and D. C. McClatchey, that Wholesale Grocers in Atlanta had during the months of March, April and May, 1920, lost money on canned fish, cheese, lard, lard compounds, and on other commodities, because the price of said commodities had gone down after the purchase by Wholesale Grocers.

Counsel for the United States then and there objected to said ques-

27 tion as to each of said witnesses, because the same was immaterial and irrelevant.

Counsel for Defendant, Oglesby Grocery Company, stated that he expected to prove by each of said named witnesses that during the months of March, April and May 1920, the prices of the named commodities had gone down; that grocers had to go down with the market, selling at less than cost, and had, therefore, lost money.

The Court ruled that the objection was good and declined to permit the introduction of the testimony.

To this ruling Counsel for defendant, Oglesby Grocery Company, plaintiff in error here, then and there excepted and said exception was noted and allowed.

20.

Because the Court erred in not granting the motion to direct a verdict for the defendant below, plaintiff in error here, on the ground of the written motion seasonably filed, asking such direction, because there was no legal testimony showing the commission of any crime.

21.

Said Court erred in not sustaining the demurrer to the indictment filed by Oglesby Grocery Company, plaintiff in error, the law on which said indictment is based being void, because in conflict with the Constitution of the United States.

22.

Said Court erred in not directing a verdict for defendant, a motion in writing having been made, prior to the argument before the Jury and prior to the submission of the case to the Jury, asking that such direction be given because Section 4 of the Act of August 10, 1917, as amended by the Act of October 22, 1919, the statute under which the indictment in this case was found and prosecuted, is unconstitutional and void and in conflict with the Constitution of the United States.

23.

The Court erred in not directing a verdict for the defendant below, plaintiff in error here, a written request having been seasonably made and in submitting the issue to a jury; because the law under which the prosecution was had, violates the Constitution of the United States in the following particulars, to-wit:

(a) Conditions existing on April 13, 1920, did not justify the employment of the war powers of the Constitution.

(b) The Act is an unconstitutional attempt to delegate the legislative powers of Congress.

(c) The Government in the indictment and on hearing relies on a price fixed by an alleged Government agency, and as no hearing was had, fixed said price, and the law and facts were disregarded in fixing such price, the defendant is denied due process of law, and the equal protection of the law.

(d) Said law is in violation of Paragraph 1 of Section 2, of Article 4 of the Constitution of the United States, in that it denies to citizens of one State privileges and immunities granted to citizens of other States.

(e) Said statute is void, in violation of Paragraph 1, of Section 2, of Article 4, of Constitution of the United States for that the statute, as administered, denies the equal protection of the laws, and is not uniform in its application throughout the several States of the Union.

(f) The statute under which this indictment is found is void in violation of the due process clause of the Fifth Amendment to the Constitution in that it does not operate on all alike, and is so
29 wanting in a basis for classification as to produce such a gross and patent inequality as inevitably leads to a denial of due process to the defendant below, plaintiff in error here.

(g) Said statute is void, because the violation of Article 5 of the Amendments to the Constitution of the United States and deprives defendant below, plaintiff in error here, of its property without due process of law, and takes its property for public use without any and without just compensation.

(h) Said statute deprives persons of property and takes property without just compensation, for that the value of such property is not considered, and only the cost thereof is taken as a measure of value, and thus violates Article 5 of the Amendments to the Constitution of the United States.

(i) Said statute is void and in violation of Article 5 of the Amendments to the Constitution, in that it seeks to take a citizen's liberty and property without due process of law and indictments thereunder are void in charging an offense without adequately defining the offense.

(j) Said statute and the indictment drawn thereunder violate the Sixth Amendment to the Constitution of the United States for that neither informs defendant "of the nature and cause of the accusation."

(k) Said statute is unconstitutional and void, because a judicial determination of what is a reasonable price is "beset by such deterrents," as to deprive defendant of its constitutional rights to due and equal process of law.

30 Wherefore, plaintiff in error prays that the judgment of said Court be reversed.

EDGAR WATKINS,

*Attorney for Oglesby Grocery Company,
Fourth Nat'l Bank Building, Atlanta, Ga.*

Filed in Clerk's Office June 30, 1920. O. C. Fuller, Clerk, by
C. A. McGrew, Deputy-clerk.

31 *Supercedas Bond.*

Know all men by these presents that we, Oglesby Grocery Company, a Corporation of the State of Georgia as principal, and J. E. Raley, as surety, are held and firmly bound unto the United States of America, its successors and assigns in the full and just sum of \$4,000.00, for the payment of which well and truly to be made we hereby jointly and severally bind ourselves and our respective successors firmly by these presents.

Whereas lately at a hearing before the United States District Court for the Northern District of Georgia in a prosecution depending in said Court in which the United States was prosecutor and Oglesby Grocery Company defendant, a final judgment was rendered convicting the defendant and adjudicating that the defendant should pay the United States the sum of Two Thousand Dollars, (\$2,000.00), and Oglesby Grocery Company seeks to prosecute its Writ of Error to the Supreme Court of the United States to reverse said final judgment.

Now, therefore, the condition of this obligation is such that if the said Oglesby Grocery Company, as Plaintiff in Error, shall prosecute its said Writ of Error to effect and answer all costs and damages that shall be adjudged against it if it shall fail to make good its plea then this obligation shall be void; otherwise to remain in full force and effect.

In witness whereof the Oglesby Grocery Company, as principal and J. E. Raley, as surety, have hereunto set their hands and seals—this 30 day of June in the year of our Lord Nineteen Hundred and Twenty.

32 OGLESBY GROCERY COMPANY.
W. A. ALBRIGHT, *Presd.* [SEAL.]
J. E. RALEY. [SEAL.]

Order Approving Bond and Supercedas.

The foregoing bond is hereby approved and it is ordered that the same operate as a supercedas.

SAM'L H. SIBLEY,
*Judge United States District Court for
the Northern District of Georgia.*

Filed in Clerk's Office June 30th, 1920. O. C. Fuller, Clerk, By
C. A. McGrew, Deputy-clerk.

Bill of Exceptions.

Be it remembered that on the trial of this case wherein the United States was Plaintiff and Oglesby Grocery Company, a corporation, was Defendant, in this Court, that an indictment was returned into open Court against defendant on the 27th day of April, 1920.

Thereafter defendant interposed its demurrer to said indictment, and, after argument, to-wit, on the 6th day of May, 1920, at the term in which said indictment was found, came on to be heard said demurrer, which demurrer was then and there overruled, to which ruling and judgment this defendant, Oglesby Grocery Company, then and there excepted, which exception was then and there allowed, and is here and now sealed.

Thereafter at the same, the March Term, 1920, of said Court, to-wit, on the 3rd day of June, A. D., 1920, Honorable Samuel H. Sibley, Judge presiding, the following proceedings were had:

The defendant, having been duly arraigned, pleaded not guilty, and a jury was impaneled and sworn, according to law, and thereupon the United States, to sustain the issue on its part, introduced certain testimony.

At the close of the testimony presented by the United States, the defendant to sustain the issue upon its part, introduced certain testimony, and thereupon in rebuttal, the plaintiff introduced certain other testimony.

The evidence and all the evidence affecting the matters to which this Bill of Exceptions relates was as follows, to-wit:

JOHN A. MANGET, a witness called on behalf of the prosecution, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Alexander:

I am Fair Price Commissioner for Georgia, appointed by the Attorney General of the United States, on the 21st day of December, 1919. I had been acting as Fair Price Commissioner prior to that time, under the same authority, but it did not come to me as directly as this one did. There was no question that arose about my authority that I ever heard of.

34 Mr. Alexander: As a Committee, both before this appointment and after this appointment, explain to the jury just what the plan of action was, and what the efforts were that you undertook to carry out.

Thereupon Counsel for Defendant, urged objections as follows: Mr. Watkins: If your Honor please, as I conceive the law to be it is utterly immaterial whether or not there was a Fair Price Committee, immaterial how they were organized or how appointed or by

whom and what they did. I object to any action of the Fair Price Committee being presented at this time in this case. I am objecting both to the method and to the fact of price fixing by a committee. I do not believe the Fair Price Committee has any legal function to perform.

The Court: The Statute seems to give the witness an official position which qualifies him to reach a conclusion and that evidently ought to make his conclusions evidence,—not conclusive evidence but as evidence in this case.

Mr. Watkins: In addition to that point, if Your Honor please, we ought to have been charged with violating the prices fixed by the Fair Price Committee, if that is expected to be used against us.

The Court: I don't think you could be. The Fair Price Commission could not make a crime, but they might make some evidence that would illustrate their story of a criminal case, but not make a crime. No order made without a full hearing should be conclusive, but I think it was within the power of the legislature to make it evidence although without any formal hearing, and I think in this case we have a situation in which there is a proceeding brought in this court and in which the orders of the President, made through this Board, would be evidence. I think they are admissible. What effect the jury will give them in their decision of the case is a matter to be dealt with later.

The Court after argument, ruled as stated above and permitted the witness to answer and to testify as to the price fixed by the Fair Price Committee and the methods adopted by such Committee.

The Witness: When the Fair Price Committee met for the purpose of passing upon and determining what was a fair price, interested parties were invited to all our meetings. They were all equally invited and we passed on it—usually a certain board,—
 35 we had one wholesale grocer there and we had one broker who handles sugar from the refineries to the wholesalers, we had two boards, we had the retailers' board and the wholesalers', all the members of the committee; we each considered all the views that were given. We had representatives of practically every line of business, the leading lines of business I will say that handle the necessities of life, invitation being extended. My committee first began to function about August, 1919, and at that time the price allowed on sugar to be charged by the wholesaler was 75 cents per 100 pounds.

Whereupon Counsel for the defendant did then and there further object to the ruling of the Court, permitting the witness Manget to answer either as to the method of fixing prices on sugar or to the fact and amount of the charge fixed on the grounds stated above and objected to any further testimony as to such charge so fixed and prayed an exception thereto, which exception was then and there allowed and sealed accordingly.

The Witness: Within ninety days from the time I was appointed chairman, between August and November, I would say, the price was increased to \$1.00 per 100 pounds. I could not swear that I

knew wholesale grocers were complying with the \$1.00 per 100 pounds profit, but it was my business to find out if they were not complying with it and I had no complaints. On April 20, 1920, the margin over cost was increased to \$1.50 per 100 pounds, allowing the wholesaler a cent and a half a pound profit over his cost plus the freight. After paying the cost and freight this was allowed over that to cover his cost of business, his expenses, whatever they were, and his profit included no general expenses, that should be covered by his gross profit and including no expense of cartage and matters of that sort. From the time the railroads brought the goods here, all other expenses were classed as general or overhead expenses and were to be taken care of out of the profits of 36 one cent. As to that profit, that cent and a half, that margin that was allowed. I got a call-down from the Government for advancing it to a cent and a half and was told to put it back to where it had been and I did so, about the middle of May. When on April 13, 1920, the sales charged in the indictment were made the profit fixed was one cent a pound. The considerations that entered into my mind and that of the committee in their transaction of advancing the margin from one cent to a cent and a half, was the fact that there was a sugar shortage and the merchants were having to pay much more for sugar than they had originally paid for it. And further because the wholesalers threatened to quit handling sugar if they didn't get a larger profit.

When I learned that there was some complaint about the prices charged by the Oglesby Grocery Company, I took the subject up with Mr. Albright on the telephone. I told him that he had been reported to me as charging twenty cents a pound for granulated sugar and asked him if it was correct. He told me yes. I asked him didn't he know that was a violation of the rules of the Fair Price Committee, and he said Yes. Then I don't know that I can quote the exact words, but I asked him to the effect if he proposed to defy the rules of the committee and sell it at what he pleased, and he said—yes, he was tired selling sugar at cost. Mr. Albright is President of the Oglesby Grocery Company. I asked him if it wasn't part of the sugar shipped in here by the Savannah Sugar Refinery on sixteen cents cost. He said that was what it cost him at the refinery and the freight to Atlanta, approximately a quarter of a cent.

I could not swear to the freight, I know it is right around twenty-five cents, it may be a cent or a fraction of a cent, or a cent and a fraction above that, for I haven't paid freight on any in some little time. I have been dealing intimately with sugar for thirty-six years myself, every year for 36 years until five years ago and have been in the grocery business wholesale and retail, for the larger part of 35 years—36 years.

37 I was put in bankruptcy in the early part of 1915. I was up to that time familiar with the course of trade and prices on sugar. Along prior to the outbreak of the European War, which occurred in the summer of 1914, I knew approximately what the retail price of sugar was. It rarely got above seven cents, or seven

and a fraction. I can't swear as to the markets at any specific time, any specific year or season, but I can swear that the price to the consumer from retailer, over a number of years, was somewhere between five and eight cents, maybe nine cents at times. I have sold it 20 pounds for a dollar many a time. That was back in the 90's sometime and at retail. You asked me the usual and customary profit of a jobber on sugar. The jobber handled sugar largely as the retailer did, largely as a matter of advertisement and accommodation to his customers. I can swear that it has not been the custom for a jobber or retailer ever to make anything that would be called a fair percentage of profit on sugar. The usual and customary profit in this market to a wholesaler selling sugar is dependent largely on the credit rating and the credit responsibility of, or the prompt paying of the bills by the retailer what percentage of profit the jobber received. If it was on a cash sale from 35 cents a barrel of 350 pounds average, to one dollar a barrel. The man who paid a dollar a barrel profit was not as careful on his buying, he wasn't as good a buyer as the man who could buy at thirty-five cents a barrel.

The margin of fluctuation for the wholesaler's profit ran from 35 cents to a dollar a barrel, but I don't want the jury to understand me to swear that no jobber ever charged higher profit than a dollar a barrel. I don't want to convey that impression. I would say that from 35 cents to a dollar dependent on the ability of the customer to buy on a close margin of profit to the wholesaler, as to whether it was nearer the lower price or nearer the higher price. And that time the invoiced price of sugar running to the wholesaler, I would say over a period of years ran from four and a half, probably 38 to six and a half cents per pound.

When I took charge of the Fair Price Committee last summer or fall the wholesaler was paying something between eight cents—Between eight and nine cents a pound, subject to a two per cent discount for cash. At that time they were taking a profit of sixty-five cents a 100 pounds, that is they were allowed that. I don't say they took it, they were allowed that—that was the maximum. We had a sugar shortage in the fall of last year. We had a maximum price to the consumer of 12 cents for Standard granulated sugar. It didn't matter where it came from, Cuba or Louisiana. The first heavy advance began to crop out in sugar in the fall, I will say now within 90 days, within three or four months after that. The Government is still to a certain extent controlling sugar that was bought by refineries and brought in here from Cuba, it is controlling it in this sense that the Government knows what these refiners paid for their raws in Cuba and the Government also knows that all those refineries they could just as well or better get as much for their sugar today than the Louisiana farmers are getting for theirs, but they are still selling it at 10 cents a pound, approximately, less than Louisiana is selling inferior sugar for. That heavy advance applied to Louisiana sugar; they have a granulated and a clarified sugar. There are some refineries in Louisiana that turn out sugar, whether grown in Louisiana or Cuba, that is just as pretty as the refineries in New York or Savannah or any-

where else. There is some sugar known to the trade as Louisiana granulated which is inferior to standard granulated, but there is other sugar produced in Louisiana that is just as white and pretty as sugar purchased anywhere.

At the time the Oglesby Grocery Company bought this carload of sugar that complaint is brought about there was a sugar shortage, there is a difficulty about sugar now, sugar is still very scarce, very hard to get and very high. The price that is being asked for sugar now: I have seen an invoice in the last sixty days where sugar was billed to a jobber which with the freight added would figure twenty-eight and a half cents, approximately. That sugar came from Louisiana.

39 Cross-examination.

By Mr. Watkins:

In November, about November, when I fixed that one cent a pound margin, I determined that that was a proper margin from the fact that the committee did not feel that at the percentage of profit then allowed the jobbers under the sixty-five cents or seventy-five cents was fair. I could only speak individually. There were twenty or twenty-five members of the committee, and I could not answer for them. My own conclusion was they ought to have more money for handling sugar than sixty-five cents on the hundred pounds, and one cent was fixed, from the view of the commission as to the facts and from the margin of profit. The committee, or commission, acted by somebody making a motion to make it one cent and the majority voted for the one cent, that is usually the procedure. Minutes of our proceedings were kept. I did not keep them. The Secretary, Mrs. Martin, keeps them. I don't know how many were present at the meeting, nor who voted for that rate, nor do I know whether any other rate than the one cent was proposed. I did not vote unless it was a tie, and I don't recall that it was a tie.

I did not participate except as the presiding officer. I do not remember who was present. Mr. W. A. Albright was not there. I don't recall having seen him. He wasn't a member of the committee, but he might have been out in the audience. I never wrote or telephoned him to be there, he had as much right to be there as anyone had. I didn't invite him any more than the other twenty. The other twenty men handled sugar, approximately twenty others handle it in this section, and they were all invited to attend the meetings of the Fair Price Committee, through the press. The public generally is invited to attend the meetings of the Fulton County Fair Price Committee, that was the language of the invitation as near as I can recall. I have extended it a good many times and I might have changed it a little. That was the substantial language of it. I usually said sugar was coming up or coal was coming up, or dry goods or clothing. I could, probably, in this book find the specific invitation (producing a book), you could probably find it there, there are a good many newspaper clippings in this book.

40 I did not issue any particular invitation, but I am sure

I invited the public to all meetings of the Fulton County Fair Price Committee. I do not recall any notice of the meeting given at which I raised the price to one and a half cents. I do not know whether or not there was any specific invitation to attend a meeting at which the price of sugar would be considered at the time I raised to one and a half cents. I will state that it was customary to give at the previous meeting what was coming up at the next meeting and also it was customary to announce at one meeting at which there were representatives of all lines of trade and business, that we would take up a certain matter for discussion at the next meeting. I did not always state exactly when the next meeting would be called, but we notified the members by telephone and through the press in advance of the sitting of the commission.

I will endeavor to find the notice of that meeting at which the price was raised to one and a half cents, now or later. There are quotations daily in certain New York commercial journals on raw sugar and on refined sugars too, I think that is customary. I am familiar with the New York Journal of Commerce, as a standard commercial paper. I am paying two cents more per pound for cotton than it is quoted in the papers now. I look at the quotations, more as a matter of amusement than to convince myself as to what the price is. I am not swearing that it is true of the sugar proposition, but in a general way, you can't rely on newspaper quotations. I do not know what the quotation in New York was on April 12th and 13th, I could not say, but I know that sugar from Louisiana had already gone up pretty high. I have a telegram from the Americus Grocery Company stating that he was offered sugar at $25\frac{3}{4}$ about April 12th or 14th. That was the only offer I know of at that, but I am not swearing that there were not a good many offers of sugar at higher prices. I knew that the New Orleans people and speculators over the country were charging pretty high for sugar, at the same time I know refineries were selling sugar on the basis of their old contracts of 16 cents, the refiners allocated sugar to Atlanta just in their turn. I don't know that they allocated any at that time. Not that particular day, April 12th, I don't know that they were able to deliver any sugar, April 12th and 13th. They had been pretty well sold up, I think. Of

41 course you ask me a question it is hard to answer, if you ask me the question if you know the price, you ask me if the New Orleans refineries could deliver sugar at 16 cents when I have just sworn that those jobbers were quoting $25\frac{3}{4}$ cents.

I do not know exactly the date when the Government fixed the wholesale price of sugar in New Orleans at 18 cents for granulated sugar, but I remember there was an agreement between the Attorney General and the planters of Louisiana,—not the refineries but the planters, in November or December, 1919, about the time, and the agreement fixed the price of granulated sugar at 18 cents.

Mr. Alexander: I admit that beginning sometime after the first of November, 1919, perhaps late in November and down for some

time, a good many merchants, to my own knowledge, in this town, bought sugar in Louisiana based on the price of 17 cents for clarified and 18 cents for plantation granulated on the plantation, if that is what he is trying to prove I will admit it to save time.

Mr. Manget: That sugar never got any cheaper, to my knowledge, after that first arrangement, and it had gone up until about April 12th when it was $25\frac{3}{4}$ cents.

Mr. Frank Lanier telephoned me and told me he would not buy that sugar unless I gave him permission to sell it at higher than the regular margin. His telegram and telephone conversation was to the effect that he would not *but* if he could not make a profit on it, and I said "you can make your profit on it just the same if it costs you $25\frac{3}{4}$ cents or 60 cents or if it cost you 18 cents. I mean to convey the rule that the cost did not figure, no matter how much that was it did not figure on whether one got a profit that was fixed. Mr. Lanier, wanted, I think, to convey the impression to me that he expected to get a larger profit because he was paying a higher price, and I tried to disabuse his mind of that fact right away, that it would not be allowed. I began in the wholesale grocery business in 1903, and continued until 1915, and during that time, I handled sugar, I could not say that sugar did not fluctuate at all because I have sworn that sugar ran from the refiner to the wholesaler from four and a half to six and a half cents,

42 there was no such wide fluctuations as now, those were seasonal changes, when the season opened it was low and toward the end of the season the price would go higher. That was regular, could be foreseen to a large extent. It was more or less the rule that sugar would advance at the end of the season, just before the coming in of another crop. There wasn't any great difference in the margin then, you could determine substantially how sugar would run, it wasn't any great risk at that time, I don't believe it was any risk at all, because if there was a decline the refiner would take care of it and if it advances the wholesaler would get the benefit of it.

At that time the wholesaler did not run any risk at all. I do not consider that he did, unless he had some actually in his stock; then he would lose on it if sugar declined. If I bought sugar at four-eighths, and before that sugar was billed out to me, if it declined to four-sevenths, they would give me the benefit of it. The custom if it went up was to give it to us at the old price. It wasn't usual to keep any quantity in the warehouse at that time, because it was always obtainable; that is there was no sugar shortage then. The general custom was when the market advanced on a commodity to try to get a little more for it, that was often done. I would not say it was universally done. Often done. I don't think there is any question about that. In fixing the cost as a basis upon which to figure the sale price, I determined the invoice price cost and added thereto the freight and no other item. I do not consider any other element of cost, not even cartage.

The only definite instructions I ever received from the Department of Justice was to reduce the profit of one and a half cents to

one cent, that is all I can recall right now. I got a circular letter or something from them that the Government would not entertain what they call replacement values. The Attorney General put us here to try at a fair margin of profit for the people and try to put down profiteering and hasn't given us any hard binding rules of procedure in these matters.

The Attorney General never told me that in determining the cost I ought to add interest attributable to the particular purchase when a man buys the goods, nor did the Attorney General tell me to consider or determine the cost of the delivery charge from the car to the warehouse, or to consider that the sugar had
43 to be delivered by the wholesaler to the retailer. I did not consider it in fixing the price, that or anything except as I have previously explained, the invoice plus the freight to the City.

That is the basis and sole basis of cost followed. That is all we called "cost." We have fixed profits—on other lines of goods we would allow a man a certain amount of what we would call overhead expense, allow him a certain amount, like women's ready to wear goods, we would not say a skirt would sell for \$55.00 but we would say that he could not sell that skirt for more than 40 per cent above his cost, which still, just like sugar, meant invoice cost plus freight. I know that it costs something to haul sugar from the car to the warehouse, I also know that in case of extreme shortage that the cars are placed right on the track of the individual, they don't have to cart it. Talk about bankrupting a man, if he drayed goods to the depot, and other things in proportion, he would have to go into bankruptcy, but all heavy goods are placed on his own side track, as a rule. It is true that cars are usually placed on the warehouse track, and there was no cartage, but it is true that at this particular time, the allocations of sugar are so small that few warehouses get a car load and that they have to distribute it among several different people, when the sugar comes from the refinery. In a case of that kind, where sugar is brought here and distributed among different wholesalers, I don't think consideration ought to be given to that cost, for this reason: When sugar is plentiful and everybody can get it, you must work a little bit to sell it and then wait a little bit for their money sometimes, and there are so many things that offset that little cartage that I did not think it would be fair to add cartage to it. I would not, where there is cartage there is more expense in unloading a car than when the car is placed at the warehouse, just the same as the expense for elevator service, lights, and things of that sort, those are all expenses, just as porters are figured in there, as general expense. I considered all that as part of the operation of the business, as general expense, what we call overhead expense. I do know that all costs of doing business is very much higher now than when I was in business from 1903 to 1915. Labor and every
44 other item of cost has greatly increased. I would say that as to all the different items there are. There are very many of them and I would say I think everything except the cost and freight should be so considered, as overhead expense; there

is no use asking me about each one. I know that sugar is now being bought on irrevokable letters of credit, and there is frequently great delay in the delivery of the sugar and I told the wholesale grocers' board before our committee that so far as I was concerned I regarded the interest as a charge, I made that exception, made it in the open committee meeting; one grocer said that he had sent money up east and it had been there several weeks and would probably be there several more weeks, and I said, so far as I am concerned I would not authorize any prosecution for him adding interest there; they took his money and would not give him the sugar, but we were suffering for sugar and I asked him not to draw his money back but to leave it there. I did make that exception in open meeting to a man, not one of our committee, who appeared before us to tell us about the situation. I have bought and sold cotton; in that business I can't swear as to the uniformity of custom. I might do my business that way and some other man may now and some other man may. Of course I will swear that when there is an advance we try to get it, just like I would have to swear that when it was declining, if we could not get what we asked before the decline, we would have to sell it for less. I had never thought about the cotton business in connection with the sugar business. We sell our cotton to the man who will pay us the most for it. Mr. Albright should not sell his sugar to the man who pays the most for it; the moral difference between the two ways of doing business is because there is no shortage in cotton here, no shortage in cotton, that is one reason. And because cotton has always been handled that way, so far as I have known of it. It is five or six years since I went out of the grocery business into the cotton business. Cotton has always been handled, you sell to the man who will pay you more for the same grade of cotton. The sugar proposition, as I have sworn, has been that a man handled it more as a business getter than anything else. If a man didn't handle anything but sugar, then I would not think there was any difference between selling his sugar, as you say moral difference, and selling his cotton at the best price he can secure, selling for the best price

45 he can get, if he handled only sugar. If he was handling sugar and a lot of other things, and it has been always the custom—you have asked me a good many questions about the custom, it has been the custom to sell sugar at cost, I would not feel right because the sugar, everybody was suffering for it and to put on a very unusually high price,—that is my feeling in the matter. I don't know whether that answers the question or not. The suffering for sugar and no suffering for cotton makes the difference.

Mr. Alexander: I am perfectly willing to admit here that replacement value is the custom in cotton and in nearly everything else.

The Court: The law of supply and demand runs business ordinarily and generally, but in a time of war the statute does.

Mr. Alexander: That is what I am admitting and I say, what is true under all conditions when the law of supply and demand operates, a dealer is justified in charging according to the advanced market. I understand that to be what he is trying to prove. If that is

true there is no use of taking up the time; I admit that to be the fact; I really think from the form of the question that the inquiry tends to make this investigation degenerate from an inquiry of fact into an inquiry into theory and moral principles. That is a mere academic discussion in effect.

Redirect examination.

By Mr. Alexander:

I don't recall any decline in sugar for the last six months. If under the conditions of the market as they now exist, a man were to buy a car load of sugar and the cost to the wholesaler did go down, there would be no effect on the ability of that man, in this market at this time to sell that sugar at the allowed profit, even though the market had gone down, before the new purchase-s could reach the town, and I will say and I have said that I think the wholesaler who would bring sugar here in these days and supply it to the retailer so he could give it to the suffering consumer was a patriot in the highest sense of the word. If a man buys a car load of sugar today at 25 cents a pound and gets it in and tomorrow the price declines 46 to 15 cents a pound, there would — no practical difficulty in selling that shipment at profit over the 25 cents, before the other sugar ever got here; I think he could sell it out at a profit before the other sugar ever got here.

Mrs. EMMA T. MARTIN, a witness called on behalf of the prosecution, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Alexander:

I am secretary of the Fair Price Committee. We have the minutes giving the information, as Secretary I have copies of the minutes. I have tried to report the spirit of the meetings as well as the actual work done. In order to save the time in going through the minutes I have made a copy here of the action. The minutes were afterwards read to the committee and adopted by them. Those are the minutes of the first meeting of the—not all of them, that is the action taken at a number of meetings. The first meeting, the action taken on sugar of the first meeting, the very first meeting. As I said I wrote up the first minutes but I haven't those because during my absence from the City the complete minutes were lost by the person who acted as secretary of the meetings and I have not gone back,—I have the book of original entry, my notes of every meeting of this Fair Price Committee when I was in the City, and I made this compilation of the facts as recorded until I could have time to go back and rewrite all the minutes,—that was at the beginning of the meetings. As I said, when I was absent from the City the minutes were lost by the Secretary, and I hav-n't rewritten those minutes, but I have the note book. That is the way I kept my minutes, that was

just a compilation of the action of the Committee. The next meeting shows that they were adopted. I called Mr. Manget's attention to that, but he is such a busy man they weren't signed. Here are the minutes of the next meeting which show that the minutes of the previous meeting were adopted, and here is the next that bear on the sugar question, runs from April 12 to May 25th. The papers I hand the District Attorney, although not signed by anybody, are what I wrote as secretary and what was read at a subsequent meeting of the Committee and approved by the Committee. The minutes here begin with the 20th of April; here are many other minutes. The minutes of that meeting were lost.

The witness then offered to read from her notes of what occurred, to which defendant's counsel objected, that the best evidence of what occurred is the minutes of the meeting, and that a transcript or brief of what occurred cannot be used by the witness. She admits the original notes are in existence.

The Court: I understand it is not a transcript of the minutes but is a memorandum she made a memorandum of her own of what she says occurred. I am allowing her to use the memorandum to refresh her recollection of what happened. It appearing that the minutes adopted as such are lost. You can answer.

To which ruling defendant's counsel did then and there object and pray an exception, which exception was allowed and sealed accordingly and the witness was permitted to testify:

The first meeting composed largely of merchants of the City; committees were formed, the chairman of each committee representing a certain line of business, and at that meeting the question of sugar was taken up by Mr. J. E. Raley; he was chairman of the sugar committee and J. H. Bullock of the grocers' committee, and they selected their own men to work in co-operation with them and to decide what was fair and just margin of profit along the then lines of discussion. J. E. Raley represented sugar; he is the representative of refineries, but I know he was put on the sugar committee because he was considered an expert on sugar, and Mr. Bullock, is a retail grocer and chairman of the sub-committee of retail grocers.

When this committee of which Mr. Raley was chairman acted on sugar, the price of twelve cents from the retailer to the consumer was fixed and ten cents from the wholesaler to the retailer. They allowed the retailer two cents, and to the wholesaler, I don't remember about that; that would be on my note books, but in making the memorandum for Mr. Jackson, he simply asked for the action taken from the retailer to the consumer. I haven't a memorandum on that of what margin was allowed the wholesaler. Mr. Raley was chairman of the sugar committee and Mr. Hudson was present. Mr. Hudson is a groceryman. He is with a wholesale house. 48 McCord-Steward Company. The sub-committee always recommended the price and the committee as a whole or the Fair Price Committee acted on the recommendation after the price was recommended; then it was open for discussion. But no price was fixed except in accordance with the judgment of the men in that line

of business, as to what was fair. Mr. Hudson was present. He was a member of the committee. Mr. Hudson finally agreed, all agreed, it was unanimously adopted that twelve cents from the retailer to the consumer and whatever their price was, was just and fair. I have so many minutes of so many meetings that I am not positive about that. According to my note book of original entry that I looked up those are among the minutes lost. It was October 12th that clarified sugar was sold, the price was fixed at 14 cents, the standard granulated still being twelve cents. Now then on October 20th, because of so many different grades of sugar coming into the market, instead of having a flat rate, a profit of one cent a pound and two cents a pound was adopted. Prior to that time the plan had been to fix the price to the consumer. But at that time the plan of fixing the price of sugar was abandoned and they adopted a plan of fixing a margin of profit of one cent to the wholesaler and two cents to the retailer. The minutes of that meeting are lost, but I know the fact, the one cent margin remained, till April 20th, I think it is. These minutes here correctly show the action taken on the 20th of April in regard to sugar. To all the testimony showing prices or margins fixed by the Fair Price Committee including the testimony of this witness defendant's counsel then and there objected because the same is irrelevant and immaterial and because to make such prices or margins binding to any extent is to deny defendant due process of law and the equal protection of the laws. Which objections were overruled and the testimony received, whereupon said Counsel prayed an exception thereto, which exception is here allowed and sealed accordingly.

The Witness: The sugar question was reopened by the chair, the question being asked of the committee thought it right for the retail merchants to pay \$80 for a barrel of sugar and handle it for a profit of \$3.50? Mr. J. H. Bullock and Mr. W. T. Akin retail grocer members of the committee said they had not complained before, but it hardly seemed fair for the grocers to be the only men called on to do business at a loss, and that handling sugar on the basis ordered by the Committee meant a loss to the retail man. They stated further that they could sell all their sugar by the barrel at a profit, but instead they had handled it for the benefit of the public. J. H. Bullock moved that the retail merchants be allowed two cents per pound profit and the wholesalers 1½ cents per pound. Seconded by Mrs. Maddox. Carried unanimously.

May 25th, 1920, meeting was opened by the Chair calling attention to the Department of Justice in prohibiting larger profits on sugar than one cent per pound to wholesalers and two cents to retailers." There was nothing left for us to do, except to accept the fact.

Cross-examination.

By Mr. Watkins:

I offer from the minutes that Mr. Akin made the statement that he and Mr. Bullock had attended the meetings since the Government

first began to regulate prices, and that the average of cost had always been allowed.

The Witness: I would like to state that that was not this committee at all, it was one,—the Government had a committee with Mr. Akin and Mr. Bullock.

Redirect examination.

By Mr. Alexander:

This action was taken on Mr. Bullock's motion and he was a retailer, the question was considered by the committee at that time as to the cost which made it necessary to increase the price. Increased cost of doing business to the retailer, there was no suggestion that the wholesaler's cost of doing business had increased. The wholesaler was allowed an increased margin to help him along, I suppose, I don't know. The increased cost to the retailer that made them advance it from two cents to three cents, was as I remember, paper sacks were considered and I remember distinctly one member of the committee saying he was paying a man \$25 a week and
50 a large part of his time was consumed in fixing the sugar into two pound packages and one pound packages instead of doing other things.

J. E. RALEY, a witness called on behalf of the prosecution, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Alexander:

I am a member of the firm of J. E. Raley & Brothers, merchandise brokers; we handle a general line of heavy goods and deal in sugar, on a large scale for this territory; we are the biggest sugar brokers in the Atlanta territory; we are not direct representatives of any refineries. We are sub-brokers for Lamborn & Company, who are agents for a number of refineries, New Orleans, Philadelphia, Philadelphia and others; international brokers, they are. We collect for this brokerage organization. We collect from the seller; we take orders, as brokers, from Walker & Brother or the Oglesby Grocery Company or other wholesalers here and place those orders with Lamborn & Company, and they in turn place them with the refineries. In July of last year, more sugar came from Savannah than any other point, for the reason that the freight rate from Savannah to Atlanta, to this territory, is cheaper than from any other refining point, and therefore it is mostly shipped from that point. The tariff rate is 25 cents on a prepaid basis; most, in fact practically all, standard granulated sugar is sold on a prepaid basis; the refiners pay the freight, and they have to figure on the tare which figures 26.9 cents on barrels and on bags 25.5. That is to say the tariff is 25 cents on the weight of the barrel of sugar and on the actual charge the sugar will figure 26.9 cents. So that the sugar is actually invoiced out to

the dealer, if the price is 16 cents f. o. b. Savannah, it is the price out at sixteen, twenty-six nine. That applies only on standard granulated sugars, as a rule, because the other grades of sugar are usually sold f. o. b. shipping point. The price of the sugar to the jobber here in the summer of last year, on standard granulated sugar, was, at the refineries, nine cents, because the sugar was produced from Government owned raw sugars. Last summer the price to the wholesaler from the refinery of standard granulated sugar was nine cents on Government sugars, with two per cent off for cash, that is within seven days.

I attended the meetings of the Fair Price Committee after they began to be held here in the city, with more or less regularity; such meetings were not generally attended by dealers in sugar.—I think it was the exception that any of the jobbers attended, that is except those who happened to be on a particular committee for some reason. There was a jobber on the grocers' committee, Mr. Hudson of the McCord-Steward Company. The grocers were complying at the time, 1919, with the margin of profits that was allowed by that committee, but under protest. I expect I received more or a greater number of protests than anybody else, because of my connection with the sub-committee that made recommendations to the general committee. I was on the committee that considered sugar. I do not recall that we made recommendations. There was just a general dissatisfaction among the wholesale grocers and retail merchants, complaining about the necessity of their having to distribute sugar upon the basis that they were called upon to distribute it, and it so developed that when the Louisiana sugar crop came on that it came on to the market unrestricted, and they seem to have gotten pretty nearly what they wanted to down there; we had to go to Louisiana to get sugars; the supply was short and on account of the shortage, we could not get enough standard sugars and Government sugars and we had to go to Louisiana for sugars and pay them pretty nearly what they wanted. Paid higher for it, and in view of the higher price the dealers thought they ought to have a higher margin, and we increased the margin to a dollar a hundred. I don't know the date, but I think it was increased to a dollar and later on to a dollar and a half. That increase and all resulted from the fact that the merchants were dissatisfied with the previous margin allowed. The Fair Price Committee discussed it. These meetings of the committee were hardly ever attended by the dealers, or the public generally. We would see a notice about it in the paper. The price was increased to a dollar and a half a hundred in the spring, because of increases in the price of sugar, the general dissatisfaction on the part of the dealers. They were not satisfied when they raised it to a dollar and a half. They still wanted more. I don't think the wholesale grocers as an organization, or I don't know that they ever suggested any particular margin that they thought they ought to have, but there seemed.—I get this from mixing around with the wholesale grocers and hearing the retail grocers also talking—they were simply dissatisfied with the margins they

were getting, and I don't remember that any of them ever stated what they ought to have. The general range of prices prior to the outbreak of the European War, I never recall sugar being much, if any, below four and a half cents a pound, and then up to seven and a half or eight, to the wholesale dealer. At that time sugar was retailing at, I suppose, on a basis of five cents cost to the wholesaler I should imagine it would retail for may be seven or seven and a half cents. I do not recall when the price to the wholesaler was lower than four and a half cents.

I think sugar was sold prior to the war on different—that the margin of profit varies with different dealers. Some would have reason for selling sugar at lower margins of profit, possibly, than some others, and they would probably sell sugar to one man cheaper than they would to another by reason of the fact that he would consider his credit better or the promptness with which he paid for it and all.

The wholesaler does deliver in the City. All their products are subjected to the expense of cartage because the out-of-town shipments they have to cart it to the depot and in the city the merchants have to cart it all the way out to College Park and East Point, and down to Decatur, and all those suburban points.

Cross-examination.

By Mr. Watkins:

During the period before the war sugar did not fluctuate rapidly, ten points was usually about as much as sugar would change at a time, up or down. And that the fluctuations were usually seasonal, that is when the crop first came in it would be lower, and would go up a little until the new crop came in, so the merchants buying sugar knew practically what he could get sugar for from time to time. My observation was that when prior to the war sugar went off they always followed the market up, because they had to follow it down whether they wanted to or not. They had to observe the declines and my observation has been that safe and sound judgment would dictate to them that it was necessary for them to take their advances. From my experience of eighteen years in the sugar business I would say it is the custom for wholesale merchants to consider the higher price prevailing at the time they sell sugar, and take the replacement value. The Government sugar first sold at nine cents. I think the Government got hold of—the Sugar Board got hold of a certain quantity of Cuban granulated, it was a limited quantity, and I didn't think of that until that minute, but they got hold of a certain quantity of Cuban granulated which they asked the different refineries to distribute for them, for the Sugar Board, and my understanding was that the refineries consented to distribute this sugar for the Government without any profit to itself at all. Now, I don't recall what the price was, but it seems to me it was around thirteen cents or fourteen cents, but I don't recall specifically. The price of Louisiana sugar in November and December,

1919, plantation granulated, was eighteen cents f. o. b. plantation and the freight charged from the location in Louisiana to New Orleans and from New Orleans to Atlanta. That made it worth in Atlanta about eighteen and a half, but usually those sugars were sold on a net cash basis, and were not subject to a two per cent cash discount. You usually had to pay for them before you got them. Some of Louisiana sugar sold higher than 18 cents. I hold in my hand a telegram dated April 12th, 1920, signed Lamborn & Company, sent to J. E. Raley, Atlanta, that offers Guatamala sugar, three thousand bags, similar to Louisiana clarified at twenty-three cents and 1350 barrels similar to Louisiana plantation granulated at twenty-four cents, both net cash f. o. b. New Orleans.

Mr. Alexander: I admit, without taking the time to prove it, I admit that some sugar was actually sold, not only offered but sold here to wholesalers at or about that time, April 12, 1920, in Atlanta, at a higher price than this man is offered. I do not see the use of proving things that were never in dispute. I cheerfully, freely and unhesitatingly admit that there was a scarcity of sugar, and that on the day that these men are indicted for selling sugar for twenty cents, sugar was actually offered and actually sold in Atlanta to wholesalers at higher prices.

The Witness: It was not possible to buy sugar in Atlanta at twenty cents delivered to Atlanta on April 12, 1920; the refineries were not in the market on that day. Practically the refiners for a week prior to that time were withdrawn from the market. All of them were running on more or less capacity; they were allocating their sugars, they were not quoting them but allocating them to their regular markets according to their past purchases and to their representative customers in those markets according to their purchases, and when sugar was allocated to a particular grocer he did not know what it was going to cost him until we told him; told him we had sugar for him this week and he would ask what it was going to cost him. We would not know when they allocated a car from Savannah and would not know what it was going to cost, at least what it was going to cost the wholesaler until we were advised. The wholesaler would not know what it was going to cost him, nor that he could get it, until it was actually allocated. Here is a list of ten refiners of standard granulated sugar in the United States, and on April 16th eight out of those ten were withdrawn from the market, and the only ones quoting at all were B. H. Howell & Co., New York and the Western Sugar Company, New York, and those quotations were only nominal and they did not ship into this territory; whatever they offered was offered to sell higher than twenty cents. Not for prompt delivery. We had some offers for later delivery at seventeen to eighteen cents and later some at twenty-five cents f. o. b. Savannah. Un-er the pre-war condition you could usually figure about eighty-five points between raw sugar and the refined. The Government allowed the refiners under control, at one time, 130 points and they later increased it to 151 points, and since the

55 Government control has been taken off of the refiners my information is that they may run now about three cents. And the duty is added also to the Cuban raw about one cent, but they are working on a spread of about three cents between the net cost of the raw sugar to the, — and the refined, that is what the raw sugar costs them at the refinery.

In cross examining J. E. Raley, a witness for the Government, Counsel for the defendant asked the witness if the price of salmon in Atlanta had decreased during the year 1920, to which question the Government imposed the objection that the evidence sought by the answer was irrelevant and immaterial.

After argument the Court sustained the objection when counsel for the defendant stated that he expected to prove by the witness that the price of salmon had gone down in Atlanta since January 1, 1920, that wholesale grocers in Atlanta had been compelled to sell salmon at less than cost and had thereby lost money.

Whereupon Counsel for defendant did then and there object to said ruling and prayed an exception thereto, which exception is here now allowed and sealed accordingly.

The Witness: At one time sugar went down, I remember very distinctly the Savannah price opened up—what I mean is after they had gotten rid of the Government control sugar, which sold at nine cents and then were turned loose by the Sugar Board and got in business for themselves, they went and bought sugars, and when they got into the new crop, sugars at the Savannah refinery opened up at 16 cents, the first price they made, and the American opened up at fifteen and a half, and I know they reduced twice, and I think three times, and it got down as low as fourteen cents, I believe, fourteen and a half certainly. After that the market started back up again.

56 Redirect examination.

By Mr. Alexander:

I sold this lot of sugar complained about to the Oglesby Grocery Company for 16 cents. Shortly after that time the price advanced, on May 1st. This sugar was sold, I think it was April—I delivered 144 barrels of sugar to the Oglesby Grocery Company on April 13th. On April 6th we delivered them a car at the same price. The American refinery put its opening price after Government control, at 15½. They have refineries in the east and in New Orleans. New Orleans supplies this territory. Then the American refinery put its price down, rapidly, to as low as 14 cents. At that time sugar was not scarce. We didn't have any indications at that time of a shortage, it was thought, as a matter of fact, that sugar would be cheaper. Wholesale grocers here bought some sugar. That decline did affect the Savannah refinery, which principally supplies this market. Some manufacturers got some; I know some of the wholesale grocers got some of it, but very little of it. That

fact did not force anybody else to sell sugar at less, it could affect sugar here, at that time we were not exceedingly plentiful, still there wasn't an acute shortage, but the wholesale grocers were able to dispose of what they could get. At that time that this 16 cent sugar was sold to the Oglesby Grocery Company, thousands of barrels were already sold here in this market for future delivery, some of which has not been delivered yet. There is no 16 cent sugar yet to come. There were none of the 16 cent sugars sold for future delivery. The lowest price sugars sold of which we have any note was 17 cents, then up to as high as 25½ cents.

Beginning at a period before Oglesby bought this and continuing on up till the present time the Savannah sugars were and are being allocated, at prices of 16 cents up until the first of May and then seventeen and a half. Most future sugars have been sold on irrevokable letters of credit to everybody they were offered; I didn't sell any of them.

It is a fact that certain speculators claiming to have supplies of sugar somewhere or the possibility of getting them, have offered to sell sugars here and all over the country at a particular price, for future delivery, provided the purchaser will give them
57 irrevokable letters of credit for the amount. That is a preposterous demand. Grocers have not in this market bought sugar on irrevokable letters of credit but they have in other markets. It has not had any effect here.

Atlanta, Ga., June 7th, 1920.

Pursuant to adjournment, the trial proceeded at 10 o'clock A. M.

Present: The same counsel.

R. L. LAMB, a witness called on behalf of the prosecution, having been first duly sworn, testifies as follows:

I am a retail grocer; the name of my firm is R. L. Lamb and Company. I bought sugar for my concern on or about the 13th of April, from the Oglesby Grocery Company and paid for it, twenty cents. Twenty cents a pound. That was standard granulated sugar.

Cross-examination.

By Mr. Watkins:

My place of business is 3 and 5 Linden Street, something like 3 or 4 miles from the warehouse of the Oglesby Grocery Company, which company delivered the sugar to me.

J. M. PHELPS, a witness called on behalf of the prosecution, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Alexander:

My business house is Phelps Brothers Grocery Company. In the retail grocery business in Atlanta. I bought sugar from that concern on or about the 13th of April from the Oglesby Grocery Company, one barrel at twenty cents a pound.

Cross-examination.

By Mr. Watkins:

I did not pay cash for it; my place of business is two miles from the Oglesby Grocery Company's warehouse. Oglesby Grocery Company's truck delivered the sugar.

T. F. MOORE, a witness called on behalf of the prosecution, having been first *been* duly sworn, testified as follows:

Direct examination.

By Mr. Alexander:

I am engaged in the retail grocery business on Ponce de Leon Avenue, Atlanta, Ga., and I bought sugar from the Oglesby Grocery Company on or about the 13th of April, one barrel at twenty cents a pound.

58 Cross-examination.

By Mr. Watkins:

I had been trying to buy sugar a few days before April 13th and could not find any. I did not pay cash for this sugar, which was delivered to me by the Oglesby Grocery Company.

The Government then offered in evidence the written appointment of John A. Manget as Fair Price Commissioner of Georgia, Counsel for defendant making no point on the execution of the appointment, objected to its introduction because it was immaterial and irrelevant and because the Fair Price Committee had no functions under the provisions of the law under which this indictment was found, the functions of such committees being limited to action under Section 5 of the Act of Congress of August 10, 1917, known as the Lever Act.

After argument the Court overruled the objection and permitted the certificate of appointment to be read to the jury.

Whereupon Counsel for the defendant did then and there object to said ruling on the grounds above stated and prayed an exception thereto, which exception is here now allowed and sealed accordingly.

JOHN A. MANGET, recalled for further examination, testifies as follows:

Cross-examination.

By Mr. Watkins (Cont'd):

In the course of the cross-examination Friday I stated I issued general notices of all hearings, that I had those notices in my book but could not find them for some little time, I have not found them since that time, and have not the notice issued before the meeting at which action was taken on sugar. I didn't quite understand that. I thought when I swore that we had issued general invitations for the public to come to all of these meetings, I thought that satisfied you, and I didn't know whether you wanted me to get the newspaper clipping of it or not. I could not swear that there was any particular notice with reference to sugar, or asked all the people to come to a meeting for that purpose; I did not wish to be understood to swear that. I swore the public was invited usually to these meetings. I don't know whether there was any particular reference to or an invitation relative to sugar. I could not swear that because that was just one meetings of quite a number, and I could not carry that in my mind.

L. FRANKEL, a witness called on behalf of the prosecution, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Alexander:

I am in the retail grocery business, with Chamberlin-Johnson-Du Bose Company, and bought sugar from the Oglesby Grocery Company on or about 13th of April at twenty cents a pound. I don't remember whether it was 300 or 500 pounds I bought.

Cross-examination.

By Mr. Watkins:

We buy our sugar where we can find it; it is very hard to find sugar; persons offer sugar to me; if I can buy it I buy it. Prices were given me for sugar about April 13th, 1920; all sorts of prices, and if you want to buy you buy and if you don't buy you don't. It was offered at different prices, some offered me at twenty-five cents a pound, but they wouldn't give me the bill and I wouldn't buy it. Some asked as high as twenty-five cents. At the time I bought this sugar, but they wouldn't give me a bill. After trying the market I bought it where I got it the cheapest.

Defendant offered in evidence stipulation between United States attorney and defendant's attorney stipulating that F. M. Spencer, a special agent in charge, representing the Department of Justice, on the 29th day of August, 1919, wrote and mailed to wholesale grocers

throughout Texas the attached letter; that the explanations following said letter were prepared under the direction of said F. M. Spencer, and mailed out as part of said letter; that in sending out said letter and explanations, F. M. Spencer enclosed the wholesale grocers throughout Texas the return envelope attached thereto.

Attached to such stipulation and offered as part thereof was an official business envelope, requiring no postage, addressed to F. S. Spencer, United States Department of Justice, Dallas, Texas, and a letter signed F. S. Spencer, Special Agent, dated Dallas, Texas, Aug. 28, 1919, requesting wholesale grocers to forward in said attached blank envelope a statement showing groceries on hand Sept. 5, 1919, with the cost and sale price thereof.

Following said letter was an explanation, reading:

Blank "Form B" is intended to show cost and selling price you are using on Sept. 5th on certain staple commodities. The cost price you are expected to use is the market or replacement value on Sept. 5th. It is the purpose of the Department of Justice to compare margins jobbers are making now with the margins jobbers were permitted to make under the Food Administration during the war.

To the introduction of said stipulation and connected documents the Government objected on the ground that the same were irrelevant.

After argument before the Judge, His honor Judge Sibley ruled that such objection was good, and refused to permit the introduction in evidence of the papers and stipulations, aforesaid.

Whereupon, counsel for the defendant did then and there object to such ruling, prayed an exception thereto which exception is here now allowed and sealed accordingly.

Defendant then offered in evidence article 1251 of the United States Army Regulations, reading:

"The price at which subsistence stores may be transferred, or sold to officers and enlisted men, is the invoice or purchase price of the last lot of the same variety of subsistence stores received by the officer making the sale or transfer prior to the first day of the month in which the sale or transfer is made; but (1) the price at a post or depot or at the office of the quartermaster will not be affected by the transfer thereto from military posts, except where the article purchased at one post for shipment to another, the former having been regularly designated as a point of supply for the particular article for the latter, in which case the rule laid down in the first five lines of this paragraph will obtain; (2) if two or more lots of the same variety of articles are received on one invoice, or on the same date at different prices, the unit price will be determined by dividing the total value of such lots by the total quantity of the same; (3) the equalization of prices among several varieties of the same article is not authorized, as in the case of several kinds of smoking tobacco, cigars, crackers, etc."

61 J. H. McLAUREN, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I live in Jacksonville, Florida, and am in the grocery business and have been connected with the wholesale grocery business since 1895. I am a stockholder in a grocery corporation, and am connected with the Southern Wholesale Grocers Association, as its President. This Association has a membership and territory, practically national, with members numbering a little less than two thousand. I have been its President something over ten years. During my time in the grocery business and my connection with the Southern Wholesale Grocers Association, I have had occasion to learn what the custom among grocers was as to replacement value in fixing their price; that custom is and has been, the prevailing market value shall rule in fixing the selling price of a commodity; that applies to all lines of groceries. That custom generally applies throughout the country, is my impression.

In my duties as President of the Southern Wholesale Grocers Association, I have gone to different parts of the country very frequently. Practically as far west as Chicago, the entire eastern part of the country, and my visits have been frequent to the various jobbing markets of the country. The reason for the necessity of taking replacement value is, the necessity of a dealer having regard to the value of his commodity. To follow the advance is necessary because it is necessary to follow the declines in the market. If a grocer does not do that, he would naturally make a failure of his business. On the 21st of May I, with a committee of wholesale grocers, had a conversation with the Attorney General. In the course of that conversation the Attorney General designated persons to agree with us as to what constituted the cost of sugar. That paper is the definition of cost fixed by the Attorney General. That is the identical paper that was written down at the dictation of the man to whom the Attorney General referred us, Mr. Riley.

Cross-examination.

By Mr. Alexander:

62 This Wholesale Grocers Association is composed of about two thousand wholesalers all over the Southern territory, and I think they are pretty good men. I should say men of average intelligence, perhaps somewhat above the average. Men who, as a rule, are identified with the activities of the communities. Active, prominent, influential citizens.

Mr. Watkins and I discussed the matter with the Attorney General. We suggested a margin of ten per cent under existing conditions would be a reasonable profit and he objected. We recognize

the replacement value as the cost of articles in our stock. That fact was not brought out in the statement I made, but the Attorney General, from our previous correspondence and personal discussions of the matter, understood it. The wholesale grocers ought to be allowed, no matter what he paid for sugar, to sell it at a profit of ten per cent of what it would cost in the market on the day he sold it, the prevailing market price. The replacement value of an article is the prevailing market value through authoritative, responsible sources. It does not have reference to speculative values that we are facing today in the sugar market. The refiners buying the sugar and refining it, are in a position to make the market value. The natural assumption is that the material secured by the refiner is secured in a state of competition and is correct.

A dealer can naturally take into consideration all circumstances surrounding the sale he is making. If the profit he is going to make would be exorbitant profit, an unreasonable profit he would not take advantage of it, but we are assuming on the basis of this act under which we are working that the dealer is called upon to determine what shall be a reasonable profit over and above his cost. I would not undertake to say that a dealer is called upon to follow the interpretation of the fair price committee as to a reasonable profit unless the fair price committee, through a public hearing shall determine for themselves what are the circumstances surrounding the business. I mean investigate the case of wholesale grocery business in any market,—they vary under different circumstances.

63 I do not commit myself to the proposition that a committee could fix a profit on which a merchant is to sell his goods unless thoroughly familiar with all the circumstances of overhead expense and all operating expenses of that business. I mean to say of that particular business on the market under all the different prices of every wholesale grocer. We recognize, I shall repeat, we recognize replacement value as fundamentally sound on any commodity we are selling; it is an economic principle that underlies all sound business. I say it makes a distinct difference between pre-war time and the present time so far as the distribution of sugar is concerned, and the position of the grocers, is that if the circumstances of sugar scarcity such as exists now gives the opportunity to the dealer to double the price of what it cost him, that it is morally and legally proper for him to do so. As I maintain we must, in the operation of our business, and as we are in a public business as distributors of the markets for them, we must all nourish our business; we recognize it at all times in the scales of these commodities, those principles of merchandising that have been considered absolutely proper. I do not say the present time is an abnormal time. The abnormal time existed when the wholesale grocers made reference to profits and prices, which was during the war. It is true that sugar sold cheaper and was really easier to get during the war than it is right now.

We told Mr. Palmer, we felt 10% over replacement value would be a reasonable profit for the wholesale grocer and we would like him to so interpret that language of the statute. As a matter of fact I

think we would have cheaper sugar today if the Government did not have its hands on sugar distribution of the country. For the simple reason that competition would have acted to right the situation and if we had not apprehended that the Government might, under the Lever Act have bought the Cuban crop again, as we were hopeful they would do, there would have been a great deal of cheaper sugar brought in.

64 Mr. Watkins: Offered the paper written under authority of the Attorney General, and identified by Mr. J. H. McLaurin, which reads:

"Cost is invoice price, plus freight to dealer's point, plus interest attributable to the particular purchase, plus delivery from car to warehouse, and wholesaler may make retailer come to warehouse or pay cost of delivery therefrom, plus any other charge attributable to the particular purchase prior to its reaching wholesaler's warehouse."

Admitted in evidence and marked Defendant's Exhibit No. 1.

FRANK LANIER, a witness called on behalf of the defendant (examined out of order), having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I bought sugar in New Orleans about the 12th or 13th of April this year; I bought a car on the 14th for 23 3-4 f. o. b. a little town, about a hundred miles outside of New Orleans. That was plantation granulated and I paid 23 3/4 for it, and could not have obtained any other sugar at any other price. I tried everywhere, in New York and in the United States, I could not find any. It was all that I could get for delivery. I could get time sugar; I bought some of that broker's sugar to come in August and September and we may lose three thousand dollars on it. I actually made a trade like that from Lamborn & Company, the price paid was I think 21 3-4 cents, is my recollection. Three or four weeks ago. I have to pay for it when it is shipped and then it takes thirty to sixty days to come from the shipper. I don't know when I am going to get it.

Counsel for defendant then offered to prove losses sustained by wholesale grocers in commodities other than sugar. To prove by Mr. E. M. Hudson, A. W. Walker, R. W. Davis, H. Y. McCord, H. L. Singer, Charles I. Brannen, Joseph A. McCord, Frank Hawkins, and D. C. McClatchey that they have lost on canned fish, cheese, lard and lard compounds, and several other commodities, and that those losses have occurred in March, April and May of
65 this year. That such losses range from ten to twenty-five per cent. To which testimony the Government objects because it said such testimony was irrelevant. Said objection was

sustained by the Court. Whereupon counsel for defendant did then and there object to such ruling and prayed an exception, thereto, which exception is here now allowed and sealed accordingly.

E. M. HUDSON, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

My business is a wholesale grocer; I have been engaged in that business over twenty years with McCord-Stewart Company of Atlanta, Georgia. In handling sugar prior to the European war it was bought and sold just like any other commodity, bought on the market and sold on the market. The price—I don't know that I can be exact about that, but the price of sugar for a number of years previous to the war ranged around four and a half, to say, eight cents, different years and different times. If the market was four and a half cents, it was sold on the basis of four and a half cents cost and if it was worth seven cents it was sold on the basis of seven cents cost. The price,—with reference to prices fixed in an instance when prices varied, was fixed like it would be fixed on every other commodity that they handled. They would consider the conditions that might obtain with regard to that particular item. Sometimes they would take the full advance and sometimes they would split it, or possibly would not advance any at all. They would use their best judgment about it. They would always consider the present value in selling; they have to do that. Sugar bought then with reference to paying for it,—the general rule of terms was payable seven days after arrival, and it very frequently—well for a long time it would be the custom in this market that the refiners would send the sugars in to Atlanta and would store them with the jobbers and with the understanding that they would invoice that sugar when the jobber wanted the sugar. More often he needed it after he had sold it. Similar conditions do not exist as to getting sugar and paying for it.

66 The conditions now and in April of this year are and were: the sugar is being offered two ways. One with sight draft and the other is what they call the letter of credit. The difference between the two is that one holder of sugar would be willing to ship it out and to be paid for on presentation of draft to the buyer by the bank, and in the other case they demand that a letter of credit be furnished at the time of the purchase, that letter of credit guaranteeing that the draft will be paid on presentation.

That letter of credit must be gotten from the bank. The first method is payment on presentation of the draft, and that is true whether the sugar has arrived or not. And the other method is practically a certified check in that nature; the bank charges the merchant, when he gets the letter of credit. The interests counts

against the merchant when a letter of credit is issued. The authority that would require a dealer to sell at the same time the same article at different prices, for the protection of the dealer, should state who he should sell it to. The dealer has two assets; he has an asset that is valuable to him, possibly more valuable than the actual merchandise he has on hand, and that is the customers, and if he does a thing to dissatisfy one or more customers he is losing money, and you can't satisfy—I can't conceive of any way you could satisfy a customer, he knowing that I had charged another customer less for a thing than I made him pay for it. And I would not know how to explain it to him. I don't see how you could do a successful business that way; you have got to have satisfied customers, to have the customer's confidence if you are to do business. We would lose customers.

67 Atlanta's market for sugar usually, in normal times, since they erected the refinery at Savannah, is in Savannah, and the next market is in Louisiana. Those markets are not open in the regular channel at all times. In the absence of those markets being open, we go for sugar, anywhere we can find it, from New York to San Francisco. In engaging in the grocery business, as in other business, it is necessary to make reserve for loss in the conduct of business properly. It is the same principle of that old thing that is instilled into us from the time we can recollect, that is to lay up for a rainy day. You have got to do that in business just as you have as individuals, because the rainy days come, and if you haven't something to draw from, you will get in a perilous position. It is necessary to buy goods in advance of the time for selling, and that is a risk or hazzard, it is always a risk. Nobody knows what the market is going to be. We can't wait to buy stuff after we have sold it, and then in all of it we of course assume the risk of selling it and the risk of a decline, and we take the chances of advance or decline in all business. That is one hazzard of doing business, that is an element for us to consider in fixing the price for our goods; it is considered in connection with all other matters pertaining to the business. During the war there was a fixed and definite price made by the Government, which was obeyed usually by sugar dealers. When that was done there were two reasons for it. One was that the Government notified the dealers exactly what the next lot of sugar would cost them and the next was that the war was on and the dealers would have done anything that was necessary or that they wanted them to do to hasten the conclusion of the war. During the war the question of replacement value was not involved because we knew exactly what our next lot would cost. That of course made it necessary to consider the replacement value, because it would be fixed. The replacement value is not now fixed by anybody. That is an uncertain value.

68 If the sugar is of a different grade of sugar than your trade wants or it is a character of sugar that you can't sell them if they have got the kind that they have been accustomed to. That is one of the big difficulties right now. You have sugars,—

sugars are offered to you now on such descriptions as Guatemala granulated, Java granulated or certain kinds of sugars; we had some offered to us the other day from Bohemia, to be shipped by Hamburg to New Orleans, on description. That was offered to furnish a low grade of sugar, which was to be shipped from Bohemia, and when it would come you could not know; it might be ninety days, or it might be nine months. We have had offered to come through San Francisco, some from different places. You don't know what the sugar is, but we do know that the merchants in this section will not buy anything but standard granulated sugar.

The market price of an article is that price at which you can buy it and at which it is regularly offered in the regular way. That is what I understand. I think we had sugar offered to us there around April 13, 1920, I can't be positive right now, at say around twenty-five cents at New Orleans.

Cross-examination.

By Mr. Alexander:

In pre-war times the price of sugar to the wholesaler ran from four and a half to seven or eight cents. It varied a good deal. And at that time we paid for the sugar on seven days after arrival. We handled sugar, in a very large measure, as a matter of accommodation to our customers. That was one consideration. It served as advertising, in a way. There was a profit in it, but not a large profit; the profit was smaller than on other things. The profit on a barrel of sugar, on a full round market it would run from 25 to 50 cents, a hundred pounds. That would be about $\frac{1}{4}$ of a cent per pound. There was not enough profit in it to handle it at that, to handle the sugar by itself and nothing else.

60 In all the mercantile business I know of they work on the order of the law of averages, that is both in regard to prices and markets and expenses. You sell some stuff, every day you sell some stuff that costs you more than you have to sell it for; you sell it for less than it costs you, and you sell some other stuff sometimes for less than the average cost of doing business, and your regular business was to keep all those things generally on a kind of average up to the end of a period—so that the average at the end of a period was in your favor. After the European war came on, sugar began to come higher to the wholesaler, is my recollection, it began to increase some. After the war ended, up to the first of last July the sugar equalization board handled the sugar and everybody knew what it was going to cost them then. When Mr. Manget's committee was organized here, the Fair Price Committee was reorganized under Mr. Manget; along about the last of August, we were buying sugar at nine cents and sold it at about 9.65; we handled a great deal of sugar at that price. McCord-Stewart do a very large business and 65 cents a hundred pounds was the margin the Government allowed to wholesalers.

I was a member of the Fair Price Committee, at that time, Mr. Alexander, the profit was—I think the profit was fixed by the Equalization Board, at any rate it was fixed by some Governmental authority. When Mr. Manget took charge, along last August or about that time, I became a member of the committee, and attended some of the meetings; there were changes, several changes authorized by the Committee, it seems to me. My recollection is it started in at 65 cents, that was during the time that the price was fixed—what I mean there was no fluctuation, no decline and no advance, the basis was nine cents. Then after the Louisiana sugar came on the market, when there was no fixed price to it there was a change made to conform to that Louisiana sugar. I don't recollect what that was. Then it was changed, sixty-five cents at one time and one dollar at another, and a dollar twenty-five at one time, and I understand since I have been in here it has been a dollar and a half at one time.

70 The Louisiana sugar, the first movement began in October or November and when the Louisiana crop first came in there was still some sugar coming from the Savannah refinery, and the other Cuban raws, that continued to sell at nine cents and twelve cents, to the consumer. When the Louisiana crop came there was no way of controlling that price, that is my understanding; there was no way to control it. They put it on the market and sold it first in New Orleans as high as twenty-two and three cents; there were a great many prices on it; I think it opened at about twelve cents; it went up and finally settled back to 18 and 19, or 17 and 18 cents, I think. That recession from uncertainty of price on the exchange in New Orleans was brought about by pressure of the Government, brought to bear on the planters down there along in October and November. It is a fact that Louisiana sugar began coming in here universally at seventeen and eighteen cents at the plantation. And at the same time the Government Cuban crop was still being sold at nine. It is also true that with even that condition of affairs, it was practically impossible to get sugar, it is a fact that consumers were oftentimes willing to pay any price that was asked to get sugar. After that time, until the Government crop was exhausted this year, we continued to sell the standard granulated at nine sixty-five, is my recollection. We continued to sell the equalized sugar at nine sixty-five because we bought it with the understanding that we were to sell at the sixty-five margin. I think that Louisiana sugar was sold open. What I meant by selling it open was this, that if a man had—if he had sugars in his house, had different purchases and different costs, he used his own judgment where he had these prices, about averaging the price, if I am not mistaken. I don't say the Committee did, but it would be impracticable, from a dealer's standpoint, to handle it in any other way. We sold Louisiana sugar on the basis—we sold it on the margin that the committee here stated for Louisiana sugar, but now as to the averaging different costs of sugar, my recollection is that that was the common practice everywhere, and I don't conceive of a dealer handling it in any other way. In this — Louisiana sugar

which was on the market and afterwards granulated got plentiful and there was all kinds of a cut in prices of the Louisiana sugar to get rid of it, to sell it out, and here along about the first of April there was a rumor that there was going to be a big drop in sugar, and there was a local cut in the price here, by the wholesaler. Well, about what you can do with a thing and what you would do with a thing—now we received a carload of an article the other day and the day we received it we got notice of a decline in the market of four cents a pound. The day we received that a large part of the country and the portion of the country that this particular product came from, had an embargo on Atlanta on account of this local strike, so that I could say reasonably that there was a shortage of it. We could have sold that, notwithstanding the decline in price, because there wasn't any coming in. Instead of doing that, we got notice of the decline in the price of four cents a pound, and when we got that we reduced our price six cents a pound. That was voluntary on our part. A merchant simply has got to take it, the loss—if it becomes current that there was a drop of five cents a pound in sugar. I understand there is sugar coming in to Atlanta that cost on a basis of thirty cents delivered here. If a customer of mine would take my advice he would not buy any of that sugar.

When we were selling sugar on a narrow margin, prior to the war, we delivered it the same as we do now. The grocery business has been quite prosperous for the last year or two. I suppose about in line with other business.

C. T. BAILEY, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I live in Columbia, S. C., and am engaged in the wholesale grocery business, selling sugar, rice and things of that kind, with the firm of Bailey Distributing Company. The Bailey Distributing Company bought New Orleans sugar in November, 1919, at eighteen cents f. o. b. the country refinery. Some of that arrived at our place January 7th, 1920, 750 bags. We weren't able to sell it all during the month of January and February on account of the fact that they had other sugar, better sugar at a cheaper price and on account of one of the dealers or two of the dealers there
72 having some of this same plantation granulated at the same price mine cost and some better sugar at a better price. I first set the price at nineteen cents, that is what it cost me up to that time, and I put the price at eighteen cents and sold a little of it and some of it I sold way down to fourteen. It averaged about fourteen and a half cents. I haven't the exact figures on it, but that is my judgment. It cost me about nineteen cents a pound.

Cross-examination.

By Mr. Alexander:

The character of that sugar is off grade, what is known as plantation granulated sugar. Grocers won't handle it at all if they can get the standard granulated. The last we got I think we paid twenty-three cents for in New York.

A. W. WALKER, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

My firm's name is Walker Brothers Company, which has been engaged in the wholesale grocery business about nineteen years. Prior to the war the custom in fixing the selling price of goods when they fluctuated in value was that prices were based on what the next lot would cost. That was applicable to doing business in sugar; we obtained our sugar prior to the war, and now from New York, New Orleans and Savannah. Prior to the outbreak of the war there was no special hazard in handling sugar. In the regular lines of commerce and merchandizing we had no special hazard. There is a particular hazard and there was early in this year, in handling sugar in Atlanta. We had to go out of the regular lines to obtain sugar; we have suffered loss in handling sugar. In one instance we had a considerable loss on a car that had been damaged in transit, and the loss was attributable to irresponsible parties and we could not recover. The loss occurred by the refiner loading it into a car where there were nails in the bottom of the car and when the claim was made the carrier who hauled it declined the claim on the ground that the condition should have been attended to by the loader. The amount of the damage was ninety-five dollars.

73 Under conditions prior to the war that would not have happened, or if it had happened, we could have fixed the loss and recovered it. It might have happened, however, but in the regular lanes it would likely not have happened. It has transpired that it was an irresponsible party,—it moved out of the regular lanes and we cannot fix the responsibility who can meet the damage. During the war we made on handling sugar, at one time it was, I think, thirty-five cents a hundred pounds, later it was sixty-five cents a hundred pounds, but that was not profitable to the dealer. It was handled at a loss. In March, 1920, we sold sugar at seventeen and a quarter cents on a cost of sixteen and a quarter, the first part of April, we sold at sixteen and three quarters on the same cost. The market was weak and it was generally understood that sugar would be considerable cheaper, and we got information to stand from under our sugar. And so we reduced the price. In business

this rise and fall of prices and loss can be prevented in only one way; that is by taking advantage of the advance when there is one. We could have bought sugar April 12th at from twenty-four cents to, I think, about twenty-five cents. After April 12th we bought sugar at about twenty-eight cents, I think it was.

The elements of cost of handling sugar in Atlanta, for wholesale grocers, is the invoice cost, of course, and there is the freight to Atlanta and there is the drayage to the store, and there is interest on the investment, if interest is paid, those things enter into it and enter always into it, not in this particular sugar but always there are those elements of cost. There are handling charges from the car to the warehouse, I included that in the drayage, cartage from the car to the warehouse, storage in the warehouse, is a general item of expense, just in the regular rental business, it is not a particular item,—I would not consider that. Delivery to the retailer is taken care of in the overhead expense, the delivery by us to the retailer, and was not included in the price of this sugar, but it is a cost that must be incurred. In my answer I am only including the things that are ordinary. There was no extra cost in this thing and the cost in handling this sugar was about one cent a pound.

74 From that I excluded the delivery from our store to the retailer. The per cent of profit I made on that lot of sugar was about five per cent, that does not justify handling sugar. We sustained a considerable loss on a purchase of sugar we made on a letter of credit that was never filled, the contract was never complied with; we are being sued for brokerage on the transaction, amounting to a thousand dollars or more.

Cross-examination.

By Mr. Alexander:

I suffered a loss of ninety-five dollars on a shipment of sugar because there was some nails in the bottom of the car; I suffered another loss of a thousand dollars because of buying under an alleged contract. It is not an actual loss yet, but I say we are being sued for it. The loss is impending. We had some other losses on sugar recently by selling at less than it cost us, actually cost us. This sugar I refer to I presume was recently, it was December probably, where we had overbought, we had some sugar we got to dispose of and we transferred two cars of sugar to other points and I think the charge against us in each instance was probably four hundred dollars a car. We paid it back for their handling it for us; their broker sold it for us; we told him we had overbought on sugar, had too much and told him to sell it for us and he did. I think there were two car loads, but just in pounds I don't know how much. It was Louisiana plantation granulated. We have a truck to cart the sugar. We are peculiarly in the L. & N. Terminal and they do not allow foreign cars in there. We operate trucks. Cartage is a fixed charge, we could haul twenty barrels at one load, but we don't always do that, however. It is more often the case

that it comes from the car that we haul it in, because our volume is so great. This hauling costs about ten cents a hundred. We sometimes get a truck by the hour for just a special load, our trucks would be busy and I would have to get a truck, and of course, and probably about ten cents a hundred is about what it made on them. Our trucks are crowded and I just step out and get a public truck by the hour or by the hundred pounds. They have to haul it from Raley Brothers warehouse, that is—well less than a mile. I don't know just how far. We pay an hour for the truck some four dollars an hour sometimes.

Defendant offered in evidence wire for 350 sacks Mexican granulated sugar sold to Walker Brothers for 28 cents net, New Orleans, wire dated April 12th.

R. W. DAVIS, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I am in the wholesale grocery business, with the firm of R. W. Davis & Company, and have been in the wholesale business about eighteen years. The custom among grocers before the war was to base prices on replacement cost of the commodity. To base the selling price on the replacement value of the article, that applied to sugar. On April 12th, 1920, I had offers to sell me sugar, Argentine granulated f. o. b. New Orleans, banker's guarantee, at 23 cents per pound, net cash. There are differences in the selling of sugar now, such as drayage and selling costs and other items than prior to the war. It is now more than double. The cost of drayage has gone up since prior to the war, about four times, I think. Labor to handle it has increased about three times as much. The cost of delivery by the wholesale dealer, has gone up about four times as much. There are differences in the rates of interest now and prior to the war. Interest is higher. The average distance we have to deliver sugar, by Atlanta wholesale grocers, in the Atlanta territory, is I would say, about two miles. We don't do a city business,—we do very little in the city business, occasionally we do, but there are grocers scattered all over the City of Atlanta. Some of them eight or ten miles from the center of the town.

Cross-examination.

By Mr. Alexander:

We deliver very little in the City. We are paying laborers about three twenty-five a day. We are paying thirty cents an hour and thirty-two and a half, some of them,—some fellows that have been with us the longest. Before the war, five or six years ago, we could get all the labor we wanted for ten cents an hour.

76 This telegram is simply an offer that somebody made to sell some Argentine sugar at twenty-three cents. I was afraid of it, that it would fall and cause us a loss, we have eight or ten barrels of sugar on hand, which we are selling at a profit of one cent a pound; we used to sell it, I always figured ten per cent on it prior to the war. When sugar costs five cents, I sold it at five and a half. Ten per cent on the invoice cost. If grocers pay the higher price the way they are now, from twenty-six and a half to twenty-nine cents, it is so unstable they are afraid to take hold for fear of a loss. There is not more demand for it than they can accept, I saw some quotations on more sugar than I ever heard of before offered at one time, from New York, for future shipments a few months hence. I think you could get all you want now if you were willing to pay the price they ask for it. I think it is anywhere from twenty-five and a half to twenty-eight and a half cents on the market. They are asking twenty-five and a half, and if we pay that we must get it. I have heard, as a matter of fact, that a great deal of sugar is being sold at thirty cents. And I bought at twenty-five and a half. I could sell it without trouble at twenty-six and a half; I don't think you can sell all you can get. It seems to me that there is a plenty of sugar if you are willing to pay the price and bring it here. Grocers are just afraid of it; afraid of the higher prices; afraid the market will decline with them. I have been afraid to handle this high priced sugar.

Redirect examination.

By Mr. Watkins:

I am handling sugar for a cent and a half a pound, but that is not a fair price; I am handling it because it is the rule we must handle it for that. The fact that the Government limits the price has something to do with the small quantity of sugar that the wholesalers care to handle. That is the effect it has. Sugar has been fluctuating downward for the last few days. That is one of the risks that a man takes in buying sugar. That is the reason that I haven't bought any sugar,—afraid of it.

Recross-examination.

By Mr. Alexander:

I have seen prices as high as twenty-nine cents, and I have seen some recent prices at twenty-six and a half. They were
77 prices for future delivery.

Mr. Watkins: This is a telegram from M. G. Gelpia & Company, to R. W. Davis & Company, dated April 12th, 1920.

"We offer subject to being on hand two thousand bags average weight hundred pounds Argentine granulated sugar guaranteed ninety-nine test prompt shipment from source at twenty-three cents f. o. b. New Orleans duty paid, terms net cash presentation document and banker's guarantee necessary."

SAM GOLDSTEIN, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I am a wholesale grocer of Atlanta, Georgia, and have been in the wholesale grocery business about eight years. Prior to the breaking out of the European war, the custom of wholesale grocers to basing the selling price on the replacement, was the replacement value was always considered. That applied to sugar as well as other commodities. About a week before April 12, I bought sugar in New Orleans at 28 cents on an irrevocable letter of credit; I have not received that particular sugar yet. I couldn't tell you why it has never come in; I guess on account of railroad delay. It was necessary to buy that sugar before it arrived and pay for it, payable on demand. This paper was payable on demand, whether the sugar has arrived or not, that is the method of buying sugar at this time, so I understand. I paid this bill and the sugar has not yet arrived.

Cross-examination.

By Mr. Alexander:

Before the war my custom was when selling sugar to take into consideration the advanced price and make my selling price accordingly. Of course — some few instances it is probably we did not, but as a general rule it was. If I bought granulated sugar at five cents and by the time I got it in sugar had gone up to six, I would base my selling price on six cents and take a profit on that, instead of on the five cents. If it goes up too much — sometimes it depends on the condition of sugar in sight at the time. If we could get it we would get it.

If there was a plenty of sugar selling at five and a quarter or
78 five and half, I would meet the competition, would not go up.

We would have to meet the competition. If we could get the price, following out the general line with our trade, we would do that. If I bought at sixteen cents and had that sugar in town, and the next lot was going to cost me twenty-eight, I would not expect to get twenty-nine or thirty. I don't know that we would get an unreasonable price, you think, twenty-nine, might be unreasonable, — probably would be. According to the rule laid down a while ago, I ought to get all I could, but we take into consideration the condition of the times, we can't go to the trade and demand the price. That would be out of reason. We haven't had that condition to contend with and I couldn't tell you whether we would or not. That condition never came up so far as fifteen cent sugar jumping to thirty cents. We haven't been allowed to get it. If I bought under the conditions quoted here at sixteen cents, and before I put it in our warehouse it went up to twenty-seven here, it is a sound business principle to raise it to that value. That has been the custom. That was the custom before the war and it ought to be now.

H. Y. McCORD, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I am of the firm of McCord-Stewart Company, a wholesale grocery house of Atlanta, Georgia; I have been in the grocery business over thirty-five years. Prior to the outbreak of the European war, I was familiar with the method of doing business of the wholesale grocers in Atlanta and surrounding territory. The method with reference to fixing the price when there was a rise in the price after the goods were bought, was, if there was an advance we advanced. If there was a decline we declined with the market. We were forced to do that; I mean where there is a decline but not an advance, but I believe that if we did not advance we would be forced out of business. I think that any reputable merchant with ability to do much business that was the custom. It is a necessary method of doing business. There are losses because the price of goods frequently go down in the wholesale grocery business, we got a car load of stuff last week that cost thirty-four cents, and we were notified that the price was twenty-nine. It is true in the wholesale grocery business that goods go up and down, and a grocer has to buy his goods sometimes ahead of the time he expects to sell them. That being true, it is necessary to go with the market, both up and down.

Cross-examination.

By Mr. Alexander:

In this pre-war condition, I think we paid from four and a half to seven and a half for sugar. The market varied. We followed the market if the market advanced; we got from a quarter to a half a cent a pound on it. Based on the invoice cost—invoice plus freight. That was the rule. It was always sold on a narrow margin. It was a staple article. The practice was if I bought at five cents to sell at five and a quarter or five and a half based on invoice plus freight on a steady market. The profit on sugar, except on an advancing market, rarely ever reached the percentage of cost of doing business. It was almost always under.

If the situation was such that I could not advance with the market, for instance I bought it at five cents and it went up to seven, and when I tried to sell at a profit over replacement value of seven cents I found that there was active competition here, offering it at five and a half, less or more, less than seven, I could not get replacement and profit. I usually held the sugar until the fool sold his out and got my profit. I don't mean fool in an offensive sense, but a business man who does not, on a staple article like sugar, follow the market up is a fool business man. On the other hand, if I bought sugar at five cents and the market went down, I met it. I went down too. I don't remember,—there might have been some time when the mar-

ket was bare of sugar in pre-war time, but very rare. If you could go up I went up, so far as the market went, and if it would go down I went as far as the market went, and competition usually made me go down. If competition kept us from going up I don't remember, it might have done so, but as I said awhile ago, we usually kept our stuff, and if it went up you would follow the market or keep
80 your stuff. That is my idea of a proper business practice, was to follow the market up if you could. Well, you are asking me questions and I am swearing to them. If I bought sugar at sixteen cents and got in a car load and there wasn't but very little sugar in town, the sugar went up, I would believe in following the market. Reasonably so, but in the wholesale grocery business, it is a man's trade that he is dependent on and I think the wise wholesale merchant usually tries to take care of his trade and doesn't try to hog them, but give them stuff they can sell all the time on the market and I believe that if a man gets sugar in that cost him eighteen cents and the market was in a bad condition and it went up to twenty-nine or thirty, I believe that a wholesale merchant would be a pig if he charged his regular trade that much for it. It is a fact under this testimony that from the day Mr. Albright got in his sugar at sixteen cents, which he was selling at twenty, he would have to pay twenty-five, twenty-seven and twenty-eight cents. That was the market price, it was as low as they could buy sugar, and as Mr. Davis testified to, a great many people would not buy it. We declined to buy it; we were advised by the refiners that sugar was going to be cheaper and we kept out of the market, and as I understand the refiners kept out of the market. It didn't get any cheaper, we might as well have bought, but you see we didn't know that till after it occurred. If you will pardon me for giving you one case, we bought sometime ago a car load of sugar and we sold it at a price of six or eight cents less than we were offered for it by a manufacturer here in town to take the whole business, but we distributed that sugar in twenty-five, in hundred pound bags all over town, took it out of the barrels and had a loss of about three thousand dollars on it. By selling it for less than I was offered for it. I think it is right for a man to take his advance, if it advances from nineteen cents to twenty-nine cents on a steady market on that, I think it is right, I think he is entitled to it, but you forget that I said a wholesale man had a certain line of trade that he has been selling probably for years, and he would only
81 defeat his profit with them and would not want to take it. If a man had that opportunity to go from 18 to 29 cents and under practical competition here in the market and did not have a line of customers, and had that opportunity to make a great big profit, I think ninety-nine men out of every hundred would take it. I don't think that his conscience ought to restrain him, if he bought that building over there for two hundred and fifty thousand dollars, and sold it for a million,—trades like that have been made all round town here. I don't think there has been any suffering on account of sugar, I do not. If there had been any suffering that could be supplied I think it ought to be supplied, but I don't think there has been any suffering. I think the shortage in sugar is caused

by the hoarding on the part of the housewives all over this country. I saw one lady on the car the other day who wanted me to sell her a hundred pounds of sugar, and I said "Haven't you got any sugar?" and she said "I have got a hundred and sixty pounds and I want a hundred more." I think it is very common.

WILLIAM H. H. PHELPS, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I am a merchandise broker and sell sugar. I am acquainted with the market value of sugar. Mr. Goldstein testified that he had bought some sugar at twenty-eight cents, a week before May 18th, 1920, and that he has not received it; the present value of that sugar is twenty-six and three-quarters. He has lost the difference between twenty-eight and twenty-six and three-quarters.

Cross-examination.

By Mr. Alexander:

I sold this sugar to Mr. Goldstein, this twenty-eight cent sugar. That was Mexican granulated. And I sold it at twenty-eight cents. I think I sold about that time three or four cars at the same price, twenty-eight cents. That was due to the fact that sugar was very scarce, I presume it was. If it had been so plentiful, it would have been, as some other witnesses have testified here, four or five cents. The price was due to the scarcity.

82 EDWARD E. SMITH, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I am a broker and do a general brokerage in different lines of commodities, grain and food lines, especially. I have been in that business about fourteen years. In that business I come in contact with wholesale grocers, and know of their method of doing business. Prior to the war there was a custom among wholesale grocers as to basing their reselling price on the cost of the item sold, the cost at the time of selling them rather than the cost when originally bought, or the replacement value as it is generally spoken of. The selling of the goods is based on the market value, by the trade generally as I understand it. The market value at the time the sale is made, that is a general custom. I have a telegram quoting sugar, April 16th, Nicaragua white granulated, delivered in New Orleans, April, May and June, twenty-seven fifty f. o. b. New Orleans, letter of

credit, payable demand draft. The other quotation, Portland, Oregon, thousand tons Java white granulated, July and August shipment from Java, twenty-two cents net cash, duty paid to San Francisco shipping weights, letter of credit, advise to be established on confirmation. The freight from San Francisco here is a dollar seventeen per hundred.

JOSEPH A. McCORD, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I am Chairman of the Board of Directors of the Federal Reserve Bank of Atlanta. Prior to becoming connected with the Federal Reserve Bank, I was Vice-President of the Third National Bank of Atlanta, started with it and organized it as Cashier. That was from 1906 up to 1914. Since 1906 I have been in the banking business. I was in the Mercantile business prior to that time. I was in the mercantile business for eight years in Carrollton, Georgia. From my experience as a merchant and a banker, I am acquainted with the custom of wholesale grocers, and other lines of business, of fixing their sale prices, on the market value at the time of selling. I was acquainted with the custom when I practiced myself in my own business, and I was told what was done in the wholesale business. I was not in the wholesale business.

The custom was this; that if they bought a shipment and had the shipment come in they based their profit largely upon that shipment. Of course if that shipment came in and in the meantime a decline should happen, they would have to reduce their price or not sell the goods. If the price advanced, why they would enhance the price. I was traveling salesman for Abbott Brothers, wholesale grocers of Atlanta during the year 1880 and '81.

As a banker I have to keep up with credits, and the way people do business that deal with my bank. From my knowledge as a banker, that custom has been continued since I have been out of business. So far as I know, and we have that very question, because if we find that a house is not living up to good practice we generally watch their credit pretty close. A man who did not follow that method of doing business, it would depreciate his credit rating in making discounts.

Cross-examination.

By Mr. Alexander:

I have never been in the wholesale grocery business personally, I was traveling salesman for Abbott Brothers for two years. If a man bought, a wholesale grocer bought a stock of stuff, some staple, and got it in and after that time the price for it on the market declined, he would have to go down, or not sell his goods, one or the other.

It was the practice to go down. A man ought to try to treat his trade fair; he would have to if he expected to hold his trade, he would have to treat them right. If they found out the market was less, he would have to go down. The man would be under obligation under those circumstances to go down at a loss to himself. I know they do and have done it myself. When there was no competition to force me down. If a man bought a stock of commodities and got them in, and after he got them in the market went up, then he went up. He did that because he could. Of course, because somebody else would not sell at any less, and he could get his price. Probably if he wanted to exhaust his stock of goods and have to replenish his stock at a higher price or just wanted to go out of that line of goods, may be the rule would be varied, and I have done that. If there was another man there with a very large stock of goods and he didn't follow the market up then no one could follow it, until the other fellow sold out. He would be under no moral consideration that would restrain him from going up, that I can see, sir, because he has got to go down when the decline is on him. If it went up to an enormous extent, I wouldn't say in consideration for his customers, he ought to divide his profit with them, I should think not. If a man has cotton on hand and it goes up ten cents he goes up ten cents a pound more, and if it goes down five cents he gets five cents a pound less.

H. L. STYGOR, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I am in the wholesale fancy grocery business, and do not handle sugar. I know the custom among wholesale grocers prior to the war as to using replacement value as the basis for their selling prices. They usually followed the market. When the price goes down they reduce and when the market goes up they follow the market upwards.

Cross-examination.

By Mr. Alexander:

They invariably follow this custom unless there are extenuating circumstances. A man might have more stuff than he wanted to handle and he would take advantage of that to handle it. That is the usual custom ninety-nine times out of a hundred though. The wholesaler loses on a decline and he has got to make enough on the advances to overcome his losses, which are bound to follow; just as sure as the tide comes in it is bound to go out, you know. The losses of dealers in this day and time are not imaginary. I can testify to that. There might be considerations when the merchant might not take all the advance; sometimes his patrons understand that he did

not take the value for it and consequently he could not do it and he has got to watch the market and take what you can get, and if you can get your full advance you should get it, that is business.

Without restraint of conscience or anything else because you
85 have got to stand your losses.

I. J. PARADICE, a witness called on behalf of the defendant, having first been duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I am in the wholesale grocery business and handle sugar. In handling sugar at this time and under conditions as they exist today, I meet with difficulties, different from the usual former method in handling it. We have first to borrow the money, but first we have hard work to get the sugar and then have to borrow money to buy it with, which is high and then it is hard to get transportation, and we haven't got anything to distribute it and we have to put it in small packages and pay for small deliveries. We haven't enough to supply the trade, and we make it up in 25 and 50 pound packages. We have to buy paper bags or cotton sacks and put it in them and send it out and the packages break or get wet and we have a loss on them. It don't come to us in those small packages and we have to repack it. We have to truck it out as far as fifteen miles, up to Chantablee. And we have to truck it from the car to our warehouse. The ordinary cost of trucking sugar from the car to our warehouse is ten cents a bag. The packing for twenty-five pounds would be at least ten cents, with the bag—ten cents for twenty-five pounds. The fair cost for delivery from our warehouse, taking the average of deliveries, long distance and short distances, we figure twenty-five cents. Twenty-five cents a step; that is the minimum.

Cross-examination.

By Mr. Alexander:

We sell very much sugar, a good deal if we have got it. I just got in a car, 400 bags, Friday, in hundred pound sacks. That came in hundred pound bags, but some people they want fifty pounds and twenty-five pounds and I pack that.

During the sugar scarcity it happened every time I got a lot of sugar, I had to do it. I am not just magnifying one little instance of that sort and trying to give the court the impression that an entire car load of sugar, or two or three were handled that way. I have done all my sugar business in twenty-five pound sacks.

86 I have to deliver it. In other words I get my load of sugar fifty or a hundred bags and I take the trouble to divide them into four hundred or five hundred small packages and ship them out. I have many customers in this territory, that I deliver to by

truck. I had to, if I didn't I would lose my trade. No, advertisement, just to keep the trade, and the man that didn't get it I lost them. Some of the retailers come and buy, say, twenty-five dollars worth of stuff if you give them sugar, and if you don't give it to him he will go somewhere else.

T. J. BROOKE, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I am in the wholesale grain and feed business. That business has a custom about taking replacement value. We have to sell on the market, regardless of whether it goes up or down. That is the custom now as well as prior to the war.

J. H. BULLOCK, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I am a retail grocer and have been in the retail business something like twenty-five years. The custom to the trade prior to the war was always to follow the market. If I bought goods at ten cents and when I went to sell they had gone up to fifteen cents I would consider the market price at the time of selling them. The market value, Competition compelled me to go down with the market.

Cross-examination.

By Mr. Alexander:

I always go up because I feel that I am justified. Of course there might be times when I would not follow the full market, but we generally follow it if the turn goes that way. We generally have to go down. Competition is pretty strict. I go down because competition forces me, and in going up I try to cover the loss I have to take. I am on the Fair Price Committee and was in October last, when the price was fixed of one cent a pound margin of profit. I made the motion to make it one cent, I think, because the wholesalers had only been allowed sixty-five cents, and I thought it ought to be a little more, the price of sugar and expense had gone up. That was one reason. They had been complaining all the time they weren't getting enough profit on it. When the price continued to advance and the expenses were a little stiffer, along in April I moved to go up to a cent and a half. The Fair Price Committee unanimously agreed to that as a fair price.

Atlanta, Ga., June 8th, 1920, 10 A. M.

Pursuant to adjournment the trial proceeded.

Present: The same counsel.

SAM H. SALTZMAN, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

I am in the wholesale grocery business at the L. & N. Terminal Building, Section 3, Atlanta, Georgia. I handle sugar. I have bought sugar that I lost on. I bought some barrels of crystal sugar and plantation granulated that I stand a loss on. On three cars over a thousand dollars; the market went against me. The market went down and I went down with it.

Cross-examination.

By Mr. Alexander:

That was sometime in February, on all three cars. I bought from Bishop C. Perkins, New Orleans, at sixteen and a half c. o. b. New Orleans and eighteen cents. I paid sixteen and a half in February for part and eighteen for clarified and plantation granulated. That was delivered in New Orleans. I sold some at sixteen and a half and sold some at seventeen; shipped to Smithville N. C., and they shipped it back and I had to pay the freight on it, because they had sugar cheaper when it reached there than they had paid to me. I sold the sugar by sample and the purchaser claimed it did not comply with the sample. I did not sue him, just stood the loss. I then sold it for what I could get for it. Some of it I advertised in the newspapers and it cost about two hundred dollars. At that time there was a supply; there was about five car loads that rolled in at that time as a less price than I paid. In February I could get it at fourteen and a quarter and thirteen and a half, and the American Sugar Refining Company was quoting twelve and a half cents. I did handle
58 several car loads of very unusually low, kind of brown sugar here. That was the most inferior looking sugar I ever saw,

and the reason I had to handle it was because I was forced to handle it; I couldn't get anything else. I don't know anything about moon-chiners, but you seized some of it, you seized a car. That I sold to the South Carolina man who turned it back on me because it didn't come up to sample. I had to sell that at a loss. It wasn't exactly plantation granulated. It was clarified sugar. They turned it down on the ground that it was not a good quality. That is what they said but they turned it down because they could get granulated at less price.

D. F. McCLATCHEY, a witness called on behalf of the defendant, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Watkins:

During the war I was connected with the Food Administration. I was finally known as executive secretary, as such Dr. Soule of Athens was Food Administrator for the State, and as Executive Secretary I had full charge of the Atlanta office where the whole business was done. I attended the meetings of the Food officers in Georgia and the Food Administration in Washington, practically once a month. The margin over cost of sugar fixed at thirty-five, later fifty and sixty-five, were fixed in conference, and in my small way I participated in fixing the margin. During the war and previous I was in close touch with the grocery business during my service with the Food Administration. I don't think that we had but one or two formal meetings, but I was in daily, you might say hourly touch with the grocers as individuals; some I sent for, some came to see me. I was in charge of the enforcement of the regulations. I had monthly reports from every dealer and from every wholesale dealer and jobber in Georgia, and those reports showed the cost of doing business. From my experience with those reports and from the other sources I gathered I was familiar with what would have been a reasonable profit during the war. From having been raised in the grocery business and after my two years' experience in the Food Administration, I would judge that I know something about the cost of handling sugar. Qualifying the statement of having been raised in it, my father was in the grocery business thirty-one years, and from a mere child until I came to Atlanta to go into business, I was working in the store. Those two charges were added to the item of cost, and the thirty-five, fifty and sixty-five respectively. There was another charge where sugar was sold on time, for the point was raised and a request was made that we allow them to charge interest. It had to be actual service performed, however, or full payments for sugar. The Government bought and sold sugar during the war. It bought the Cuban crop of sugar. In fixing the Cuban crop, the Government gave consideration to the high cost in purchasing the Louisiana crop. The purpose of the correction by this sugar equalization board was to protect the Louisiana growers, who had informed us that they could not and would not produce sugar if they had to compete with the Cuban price. So that the price was fixed by the Government on what was purchased of Cuba was based on the price in Louisiana, on a further margin to the grower in Louisiana. The Government made profits in the business. I can't tell you in the aggregate it was about thirty-two million dollars, or thirty-seven million after all expenses were paid.

Cross-examination.

By Mr. Alexander:

Herbert Hoover was United States Food Administrator, and the State Administrator was Dr. Soule; I was secretary of the State Food Administration, here in Georgia. Dr. Soule appointed me, or rather nominated me. The appointment came from Mr. Hoover. My duties were confined to the situation in Georgia. We had conferences practically each month in Washington of the State food administrators together with those engaged with the administrative work of the food administration in Washington, and attending these conferences would invariably be a representative from the Grain Corporation, from the Sugar Equalization Board and from other Boards with them. Whenever the question of sugar was being discussed a representative or representatives from the Sugar Board would be present. Those were informal conferences. I attended in whatever official position I had. I participated in the conferences and did a good deal of talking. I say the Government made thirty-five million dollars from dealing in sugar; I know that from a statement made by Mr. Hoover when I was present at a dinner

at his house. He said they had made a profit of thirty-two million dollars. I am sure that he made the statement. I don't think, in fixing the price of the Cuban crop that they at that time had under consideration the margin of profits they were going to allow jobbers. That was another matter. Their consideration in fixing the price of the Cuban crop was to fix such a price as would protect the Louisiana grower, in order to induce him to grow sugar and more sugar. The best information of that fact, Mr. Hoover wrote the administrators a letter, it was written to President Wilson, and suggested a discount, and described what they expected to do, and in that letter he did not state any amount; he just stated that the profit realized from that would be an enormous amount of money. That, was about—I won't attempt to be exactly accurate on that, it was approximately November or December, 1917.

When I was functioning with the Board the margin of profit allowed the wholesaler was sixty-five cents. That was the last margin. The Board, as originally constituted, quit functioning about the early part of 1919, as I recall it. Shortly after the armistice, within a few months after. About three months, I would say. It didn't go out of business entirely. As a matter of fact there are some remains of it there now, still matters unsettled or unfinished. That condition continued until along in July or August, 1919.

When Mr. Manget's committee began to function I attended the meetings at first, I think one, perhaps two. There was a pretty representative attendance there from merchants and citizens generally. As I recall it, the only way that sugar and flour were touched was the statement that certain margins had been fixed and that the committee could not and should not go into that. And I think that I am the one that made that statement to the committee, that since those were already fixed in Washington, I did not think the committee had any authority over those.

Mr. Watkins: I offer certain documents—telegrams sent by the Oglesby Grocery Company and the replies thereto, in which the Oglesby Grocery Company, from April 6th to April 12th—April 8th to April 12th, asked different refiners to sell them sugar and quote them sugar, and their replies stating that they had no sugar.

The first telegram is one sent by the Oglesby Grocery Company on April 8th, to Arbuckle Brothers, New York City:

Reply April 9th, reading: "We are unable to handle new business at present and in fact we cannot state when we will be in position to do so."

The next telegram April 12th to Arbuckle Brothers, calling attention to the fact that "for many years we have sold your coffee and have not received any sugar from you. We are in critical position account of sugar shortage and feel that you should allot some to us."

Reply, dated April 13th, "Acknowledging your telegram of the 12th, we regret exceedingly our inability to favor you with sugar. We are at present heavily oversold and entering no new business."

The next telegram, April 8th, sent to the Federal Sugar Refining Company: "Please do not overlook us in making allotment of sugar."

Reply dated April 9th: "With reference to your wire of the 8th, would say that unfortunately our position is such that we can do nothing at the present time."

The next telegram to William Henderson, New Orleans, reads: "Will you ever be in a position to furnish some sugar," dated April 3rd.

The answer: "We did not wire as we did not have any sugar to offer."

Telegram, Franklin Sugar Company, dated April 5th, to the Oglesby Grocery Company: "Wire received. Not for some time." In answer to their request for sugar.

Next a letter dated April 10th from William Russell & Company, New York and New Orleans: "We have received your telegram asking us to buy three cars of fine granulated sugar. We have
92 not been able to buy any sugars for shipment to your part of the country."

April 10th, Oglesby Grocery Company to Bishop C. Perkins, New Orleans: "Have you forgotten that we handle sugar."

Reply dated the same date: "Sugars have been so scarce that as soon as we get any we have ten buyers for each car load. The only sugars we have had recently are some sugars refined on plantation from Cuba or Porto Rican raws; in order to sell these sugars in your territory we have to bring them to New Orleans paying the freight from plantation to New Orleans and lose the difference and therefore most all the sugars have been going west of the Mississippi river, where the same rate of freight applies as to New Orleans. Then again your territory has been getting cheaper sugars from Savannah than we can buy this Non Bone Black Sugar. At the value of raws today the factories could not buy raws and sell granulated under 21c.

Telegram, April 3rd, to Young Griffin Coffee Company, New York City: "Can you buy us some fine granulated sugar. Arbuckle not offering here, but may sell you."

Reply under date of April 5th: "Your telegram in regard to sugar reached us Saturday afternoon after the sugar houses were closed for the day. We took the matter up this morning, however, and are very sorry to report that it is absolutely impossible to buy a pound of sugar here now for anything like prompt shipment but even if we could buy it we could not ship. The big strike here has absolutely shut down the shipment of any freight of any kind."

Telegram of April 3rd, to W. R. Grace & Company, New York: "Can you buy for us some fine granulated sugar." Signed Oglesby Grocery Company.

Answer to that, dated April 5th: "We are in receipt of your wire inquiring concerning fine granulated sugar. We regret that we are not handling this grade of sugar at present, but will be glad to quote you in case we have some in the future."

93 Another letter from W. R. Grace & Company, New York, dated April 16th: "Replying to your favor of the 8th instant, we regret to advise that we have no sugar to offer for either spot or future shipment at this moment. We have cables out in several directions in an effort to secure further quantities and if we are successful we will wire you."

Admitted in evidence and marked Defendant's Exhibits Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 20, 22, 23, 24, 25, and 26.

A. W. WALKER, recalled for further examination, testifies as follows:

Direct examination.

By Mr. Watkins:

The quotations on refined sugar, by the American Sugar Refining Company, is now twenty-two and a half cents. They offer at that price sugar till December 1st, 1920. The effect of that twenty-two and a half cent price on grocers who have bought at twenty-six-seven and -eight sugar, is very depressing. They are facing heavy losses, even from my knowledge of the grocery business.

Cross-examination.

By Mr. Alexander:

I have some sugar coming here, bought recently from twenty-four to twenty-five and up to twenty-eight cents. I bought it in New Orleans. Granulated sugar. It is bought for June and each month's delivery in succession. I think that if I telegraph the American Sugar Refining Company they will promptly deliver the sugar up to December, at twenty-two and a half cents. From their office, where sugar is usually made. They have offices in New Orleans and also New York. I guess we have got between fifty and sixty thousand dollars of sugar, already contracted for, for delivery in successive months, June, July, August and September. This twenty-two and a half cent price goes into effect immediately. That is American

Sugar Refinery sugar. They have two refineries, one at New York and one at New Orleans. I know the statement is made that jobbers who have invested in sugar face a grave loss, and if so we are the sickest folks—It is published in the newspapers,—in the daily press. I have got the clipping. Not going down but twenty-two and 94 a half cents put on sugar till December. That being the market then, I expect to drop my price on sugar that I have already bought. I am going to use my best judgment on it and stand from under to the best advantage I can.

Defendant offered in evidence and read quotations from the Journal of Commerce of New York, giving sugar prices as follows:

Apr. 10th issue, showing quotation of Apr. 9th at New York 16.85c. per pound. Raw sugar quoted, duty paid, spot price 17.29c. per pound. With the statement that one of the refineries was not in the market.

Issue of April 12th, quoting sugar of April 10th at 17.10c. per pound. Cuban raws, duty paid, at 17.59c. per pound.

Issue of April 13th, quoting sugar on April 12th at 17.30c. per pound. May futures at 17.40c. per pound. Cuban raws at 17.59c. per pound.

Issue of April 14th, quoting sugar as of April 13th at 18.05c. per pound. May futures at 17.55c. per pound. Cuban raws, duty paid, at 18.29c. per pound.

Issue of April 15th, quoting sugar as of April 14th at 18c. per pound.

Issue of April 15th, quoting sugar as of April 14th, at 18c. per pound. May futures at 18c. per pound. Cuban raws, duty paid, at 18.54c. per pound. With the statement in all quotations that the Federal, American, Arbuckle and Warner Refineries were withdrawn from the market.

Defendant closed.

95 JAMES LYONS, a witness called on behalf of the prosecution, in rebuttal, having been first duly sworn, testifies as follows:

I am in the wholesale grocery business at 22 Central Avenue, Atlanta, Georgia, and have been since last November. I have been a stockholder in a wholesale house in Louisville, Kentucky, I suppose twelve years or better. In my present business I have the usual expenses that other wholesalers have, in cost and interest; they have some expenses we do not. I have rent, employees, deliveries, interest, and I have men employed in my place of business, I think about twelve. There is expenses that I do not have that other grocers do, they travel men and we do not. There is no other expense, that I know of. My company pays no dividends in the ordinary sense. We pay Mr. Creasy one-half of one per cent on the volume of business done. The only expenses, the dividends and traveling men, that I do not have that the other grocers have. My business is conducted like any other grocer's

business. I buy and sell. The margins of profits on the cost I allow to pay expenses outside of what I pay Mr. Creasy, runs different on different articles. We handle sugar and flour on a one per cent basis. Mr. Creasy gets one-half of one per cent and that leaves us one half. I have one half of one per cent on sugar and flour for the purpose of paying expenses of doing business. On other articles, three per cent. I do not get the three per cent where I don't handle the goods, but one per cent. I call goods I sell without handling, anything that is drop-shipped from the factory. That is where I don't take it out of the car, but pass it on to our customers. We do not have more than three per cent on anything. Our company has other stores elsewhere. They have been carrying on that sort of a business in the United States, twelve years or more. They have never failed to make expenses on that,

96 I think not. Out of the three per cent, no one gets anything out of it except Mr. Creasy himself, and he gets one-half and the business gets the other two and a half per cent.

We have a car of sugar on the track bought, I believe last February. It cost us fifteen and three-eighths cents, I believe. It has been here a few days. I don't know just what date. I have not unloaded it yet. We quoted this sugar out to our customers at seventeen cents; it is standard granulated. We are actually going to sell it at seventeen cents. And make enough to pay expenses of operations. We will not really charge that full seventeen cents; I don't think so. We have no way of arriving at the exact cost on that sugar until it is in and we get the freight bills and everything and figure on the exact cost, and we quoted this sugar at seventeen cents to be on the safe side. As soon as it is in and checked off and we know the amount of sugar and what it actually cost, we give them,—if this seventeen cents is more than the amount that sugar cost we give it back to them in the way of a rebate or credit account, as they elect. We figure elements of cost in determining what to base our one per cent on or our one-half per cent. Transportation, demurrage, whatever it may be, the invoice cost, transportation, demurrage if any. Possibly there might be a little demurrage on this car. If the figures should come that it cost seventeen cents exactly, I would value the sugar at seventeen and seventeen hundredths per pound. Seventeen cents on a hundred pounds is supposed to pay all of the expenses of the business. If it, were meat, and it cost thirty cents, I would sell the meat at thirty cents and charge three per cent for handling. That would be nine-tenths of a cent, or thereabouts. I would sell that meat to our customers at thirty and nine-tenths cents. Creasy Company has operated on that basis for twelve years. They have fifty-one stores.

Cross-examination.

By Mr. Watkins:

I do not have one of those Creasy contracts I make with dealers; we make a contract with a dealer by which he gives us three

hundred dollars for the privilege of doing business with us. We don't use that as expense of doing business, it is just a service contract. He gives us three hundred dollars for our selling goods to him. I don't know what becomes of the three hundred dollars. It is my understanding that it belongs to the retail merchant; it is always his. Creasy first started being a corporation, and possibly when he found that prosecution was begun under the "blue sky" laws, he changed and adopted this contract system. I am a stockholder in the first Creasy house organized. That is the Louisville house. That house is the same as this company here; it is a sub-ordinate corporation; just a house of the Creasy chain. The retail merchant owns it; it is not a stock company. The retailer invests his money; we are operating on his money; we are operating on the money of the retailer, and don't consider any return on the investment in arriving at our profit; we came here without any money and get the retailers of Atlanta to put up the money and what we give them on that money is in lower cost of merchandise. We haven't any investment to consider. All other wholesale grocers have investment. That sugar, I think, cost sixteen twenty-six here, as near as we could get at it; we bought at Cleveland, Ohio, from a broker at Cleveland, Ohio, to be shipped from Philadelphia or New York. It cost fifteen and three-eighths at Philadelphia or New York; we have to pay the freight from there here. We have our own trucks; it costs something to operate those trucks, but we do not charge that as a part of the cost. Only freight and demurrage if there is any demurrage. The demurrage, I do not think, is as much as ten dollars a car, per day after the first forty-eight hours free time. We quoted seventeen cents in order to be on the safe side. We didn't know where the sugar was coming from, whether New York or Philadelphia. I stated that we quoted it at seventeen cents before the sugar arrived. We have no way of verifying the exact cost. We make the retailer pay a margin, so he pays the seventeen cents cash, and billed to him at seventeen, seventeen. We bill to him at seventeen cents a pound, one per cent would be seventeen, seventeen. He pays seventeen, seventeen, and then when we get through and find the cost has not run that high, we pay him back. We do. Our business is done on a cash basis, and by these men who put up this service contract with us.

Redirect examination.

By Mr. Alexander:

Except in the matter that the retailer makes these advances, we have all of the other expenses, except traveling, that any other grocer has. This sugar was here on the track before we knew it had ever been shipped, and the Federal Reserve Bank called me up the other morning and says: "we have a draft here, for a car load of sugar, and you have till one o'clock to take care of it." It was then possibly ten or ten-thirty; that gave me two hours to

get up the ten thousand dollars. I got it by borrowing it and paying interest. That is an ordinary occurrence in business. Our trucks cost per day, allowing for depreciation and everything, about eighteen dollars a day; we charge that to general expenses. The cost and everything else is paid for out of this profit of one-half of one per cent.

This three hundred dollars that the merchant puts up is put up in installments or cash. The service contract lasts twenty years and he has a right to transfer the contract. What I mean by selling for cash, if this man has paid up his contract in full, he has a credit with us of three hundred dollars and no more. If he fails to pay his bill, that is charged against the three hundred dollars, which is all the capital we have to do business on; we pay no dividends on that.

Recross-examination.

By Mr. Watkins:

I borrowed that money to pay for the sugar for ten days. I don't remember the exact amount of interest, I think the interest on it is possibly some eighteen or nineteen dollars. I don't remember the exact rate. We haven't got this sugar yet; it is on the track in the car. We borrowed the money one day last week, something like a week lacking a day or two.

99 JOHN A. MANGET, a witness for the prosecution, recalled in rebuttal, testifies as follows:

Direct examination.

By Mr. Alexander:

The elements of cost to be taken into consideration under the definition of cost, besides the invoice cost and freight, interest attributable to that purchase, delivery from car to warehouse, and any other charge applicable to that particular purchase, as stated by the Attorney General, to be added, are no serious feature in the cost of the sugar. Wholesalers are allowed seven days' time to pay for it after the sugar arrives at their depot or side-track or station, and then they are allowed at the end of that seven days a discount of two per cent off the amount of the invoice, which would figure at the price of this sugar thirty-two points as a cash discount. Thirty-two cents on a hundred pounds. Carloads of sugar are delivered at the siding that belongs to the merchant, when they have sidings and cost of such delivery. The highest rate I ever heard would figure 1/10 of one per cent.

Cross-examination.

By Mr. Watkins:

The same methods of paying for sugar do not obtain as formerly; sugar is sold on irrevocable letters of credit. I don't know how

much is sold. I have heard that that was tried here in Atlanta for sugar when there was such a demand for it. I know that the cost incident to hauling has been greatly increased in the last few years. I used to haul 2,500 pounds of sugar for 25 cents, but the price I just gave was in accordance with some witness yesterday who swore that the cartage charges were as high as ten cents a sack of a hundred pounds. While it takes, in addition to the cartage, somebody to unload the sugar, from the car to the dray and from the dray to the warehouse. That goes in the cartage of it, as I understand it, to take it out of the car. Grocers here have to keep a regular set of laborers on hand at all times to unload cars. I always kept the men pretty busy. I had six, seven or eight, and I think they were all kept busy. You know handling sugar, like every other article, is just a small part of their duties. It takes some time and some cost to load from the warehouse to the 100 retailer. I would think that the cost of doing business, was above what Mr. Lyon said his largest profit was, three per cent; I would consider it above that. I know a large majority of the stuff handled a wholesale grocery store never gets ten per cent.

J. L. PATRICK, a witness called on behalf of the prosecution, in rebuttal, having been first duly sworn, testifies as follows:

Direct Examination.

By Mr. Alexander:

I am a deputy collector of Internal Revenue. As such deputy collector I have in the last year had occasion to sell sugar. Sold at public sale, here in Atlanta, right in front of this building. I expect there was a hundred bidders. I suppose a thousand pounds of it,—there were thirty or forty sacks I never counted them. At that time sugar was retailing in the stores here at about twelve cents a pound. Mr. Alexander told the crowd that under the law this sugar had to be sold at public outcry—and that the price of sugar was twelve cents, and it made no difference what they paid, they could not sell it for over twelve cents. A limit was put on the amount anybody could buy of one sack. Mr. Alexander told them not to bid over twelve cents; that he didn't think it proper to do that.

After the announcement was made that merchants would not be allowed to sell it, if they bought it, for more than twelve cents, I don't remember whether any merchants bid or not. The sugar brought all the way from twenty-six to thirty-one cents. The date of that sale, as I remember it was the 17th day of November.

Mr. Alexander: We close your honor.

The Court: Anything further for the defendant.

Mr. Watkins: Nothing further, Your Honor. I want to urge that motion. I don't know, unless Your Honor asks for it, I do not care to argue it at this time.

The Court: It seems to be governed by a previous ruling, but if you want to be heard from?

101 Mr. Watkins: Unless Your Honor asks it I do not care to argue it at this time. I just want to urge it at this time.

Upon the close of the testimony, and before the argument on the charge of the Court, defendant made a written motion in open Court, asking the Court to direct a verdict for the defendant, which motion is as follows:

1.

The statute on which the indictment herein is based is unconstitutional and void for the reasons, among others, as follows:

(a) Conditions existing on April 13, 1920, do not justify the employment of the war powers of the Constitution.

(b) The Act is an unconstitutional attempt to delegate the legislative powers of Congress.

(c) The Government in the indictment and on hearing relies on a price fixed by an alleged Government agency, and as no hearing was had, fixing said price, and the law and facts were disregarded, the defendant is denied due process of law, and equal protection of law.

(d) Said law is in violation of Paragraph 1 of Section 2 of Article 4 of the Constitution of the United States, in that it denies to citizens of one State privileges and immunities granted to citizens of other States.

(e) Said statute is void, in violation of Paragraph 1 of Section 2 of Article 4 of the Constitution of the United States, for that the statute, as administered, denies the equal protection of the laws, and is not uniform in its application throughout the several States of the Union.

(f) Said statute violates Paragraph 1 of Section 2 of Article 4 of the Constitution of the United States, for that, as applied by the various agents of the Department of Justice and Price Fixing Committees throughout the country, a different standard of reasonableness of charges has been made in different States.

(g) Said Act violates Paragraph 1 of Section 2 of Article 4 of the Constitution of the United States, and the Fifth Amendment thereto, for that in said Act exemption is made of its application to farmers and others; and in that in the enforcement thereof by the President, dealers in meat, rice, canned goods, and other food products have been exempted from its application.

102 (h) The statute under which this indictment is found is void in violation of the due process clause of the Fifth Amendment to the Constitution in that it does not operate on all alike, and is wanting in a basis for classification as to produce a gross and patent inequality as inevitably leads to a denial of due process to this defendant.

(i) Said statute is void, because in violation of Article 5 of the Amendments to the Constitution of the United States and deprives this defendant of its property without due process of law, and takes its property for public use without any and without just compensation.

(j) Said statute deprives persons of property and takes property without just compensation, for that the value of such property is not considered, and only the cost thereof is taken as a measure of value, and therefore the statute violates Article 5 of the Amendments to the Constitution of the United States.

(k) Said statute is void and in violation of Article 5 of the Amendments to the Constitution, in that it seeks to take a citizen's liberty and property without due process of law and indictments thereunder are void in charging an offense without adequately defining the offense.

(l) Said statute and the indictment drawn thereunder are vague, indefinite and uncertain and charge no crime.

(m) Said statute and the indictment drawn thereunder violate the Sixth Amendment to the Constitution of the United States for that neither informs defendant "of the nature and cause of the accusation."

(n) Said statute is unconstitutional and void because a judicial determination of what is a reasonable price is "lessed by such deterrents" as to deprive defendant of its constitutional right to due and equal process of law.

2.

The testimony presented by the Government shows the commission of no crime.

103 After argument on said motion, the Court overruled the same, to which ruling the defendant then and there excepted. Its exception was duly noted and allowed by the Court and is here now sealed accordingly.

Prior to the charge of the Court and the argument of Counsel, Counsel for defendant, Oglesby Grocery Company, requested the Court in writing to give the jury the following instructions:

1.

Cost, as used in the indictment, and as used throughout this charge means the price paid, or contracted to be paid when the sugar was bought, plus the freight paid to transport said sugar from the place where it was bought to Atlanta, Ga., plus interest on the investment in the sugar, calculated from the time the sugar was paid for until the sale thereof was made; plus the reasonable and necessary charges in removing and delivering the sugar from the car in which it was shipped to the warehouse of Oglesby Grocery

Company; plus the cost of delivering the sugar from the warehouse of Oglesby Grocery Company to the retail merchant to whom it was sold, plus any other charge attributable to the particular purchase of sugar prior to its reaching the warehouse of Oglesby Grocery Company.

The Court refused to give said instructions, and, while the Jury was still at the bar of the Court, defendant, Oglesby Grocery Company, then and there excepted, and its exception was duly noted and allowed by the Court, and is herenow sealed accordingly.

2.

It is not sufficient evidence of the cost of the sugar for the Government to establish the price paid therefor by Oglesby Grocery Company to the Savannah Sugar Refining Company and the freight paid for transporting said sugar from Savannah to Atlanta.

The Court refused to give said instruction, No. 2, and while the Jury was still at the bar of the Court, defendant, Oglesby Grocery Company, then and there excepted, and its exception was duly noted and allowed by the Court, and is here now sealed accordingly.

194

3.

The burden is on the Government to establish the cost of the sugar, as cost has already been defined.

The Court refused to give said instructions No. 3, and, while the Jury was still at the bar of the Court, defendant, Oglesby Grocery Company, then and there excepted, and its exception was duly noted and allowed by the Court, and is here now sealed accordingly.

4.

If sugar, alleged to have been sold, cost more than 16.269¢ per pound, you will find the defendant not guilty.

The Court refused to give said instruction No. 4, and while the Jury was still at the bar of the Court, defendant, Oglesby Grocery Company, then and there excepted, and its exception was duly noted and allowed by the Court, and is here now sealed accordingly.

5.

If you believe that defendant's officers who sold the sugar described in the indictment acted in good faith and believed that it was their right to sell said sugar at the price it was sold, you will find the defendant not guilty.

The Court refused to give said instruction No. 5, and while the Jury was still at the bar of the Court, defendant, Oglesby Grocery

Company, then and there excepted, and its exception was duly noted and allowed by the Court, and is here now sealed accordingly.

6.

The Court directs you that in determining what is a just and reasonable charge to be made in handling and dealing in sugar that you must take the value of the sugar at the time the sale was made by the defendant, and if you find that the value of such sugar had increased since it was acquired by defendant, defendant is entitled to the benefit of such increase. If therefore, you believe from the evidence that the sugar alleged to have been sold in this case was, at the time it was sold, of a market value in excess of that alleged in the indictment or if the Government has failed to prove such value, you will find the defendant not guilty.

105 The Court refused to give said instruction No. 6, and while the Jury was still at the bar of the Court, defendant, Oglesby Grocery Company, then and there excepted, and its exception was duly noted and allowed by the Court, and is here now sealed accordingly.

7.

Value means what the sugar was worth in the market on the day of the sale. In determining what such value was, you will consider offers to sell or buy and market quotations and from all the facts determine what was the present value of sugar on April 13, 1920, and the cost to defendant is not a standard of value.

The Court refused to give said instruction No. 7 and while the Jury was still at the bar of the Court, defendant, Oglesby Grocery Company, then and there excepted, and its exception was duly noted and allowed by the Court, and is here now sealed accordingly.

8.

In determining whether or not the defendant sold sugar at an unreasonable rate or charge, you will determine from the evidence first the market value of the sugar at the time it was sold. The fact, if you believe it to be a fact, that the sugar increased in value over what it was bought for, must be considered by you, as you cannot base your verdict solely on the freight charges and amount paid for the sugar.

The Court refused to give said instruction No. 8, and while the Jury was still at the bar of the Court, defendant, Oglesby Grocery Company, then and there excepted, and its exception was duly noted and allowed by the Court, and is here now sealed accordingly.

9.

"Willfully," as used in the indictment implies on the part of the defendant a knowledge of the facts, and a purpose to do wrong. It means a voluntary act with a bad purpose, and without ground for believing the Act to be lawful. Before you can convict the defendant, you must believe from the evidence beyond a reasonable doubt that the defendant knowingly without ground for believing the act to be lawful, with a bad purpose and with a purpose to do wrong, made a sale, or sales, of sugar as alleged in the indictment.

The Court refused to give said instruction No. 9, and while the Jury was still at the bar of the Court, defendant, Oglesby Grocery Company, then and there excepted, and its exception was duly noted and allowed by the Court, and is here now sealed accordingly.

10.

Neither the so-called profit of 1¢ per pound, nor the profit of 1½¢ per pound, claimed by the Fair Price Committee to have been fixed as reasonable in the sale of sugar, is valid, there having been no notice to defendant, defendant not having been heard when said charge or charges were fixed, the Committee not having considered all the elements of the cost.

The Court refused to give said instruction No. 10 and while the Jury was still at the bar of the Court, defendant, Oglesby Grocery Company, then and there excepted, and its exception was duly noted and allowed by the Court, and is here now sealed accordingly.

11.

You are further charged that because in fixing such charge no consideration was given to value, the charge fixed by the Committee is void.

The Court refused to give said instruction No. 11 and while the Jury was still at the bar of the Court, defendant, Oglesby Grocery Company, then and there excepted, and its exception was duly noted and allowed by the Court, and is here now sealed accordingly.

167

12.

The indictment in this case alleges that the defendant made an unjust and unreasonable charge, and further alleges that it made a charge of 20¢ for selling sugar, and that a reasonable charge for selling sugar was 17¼¢. These allegations appear in each of the indictments. The Government contends that "charge" as used in the foregoing allegations should be construed as meaning price. You are directed that the indictment as drawn is valid, but that if it

is construed to mean price, the indictment is so indefinite as not to charge a crime, and, as the evidence shows you that a less than 17 $\frac{3}{4}$ ¢ per pound charge was made by defendant for dealing in and handling sugar, you are directed to render your verdict for the defendant.

The Court refused to give said instructions No. 12 and while the Jury was still at the bar of the Court, defendant, Oglesby Grocery Company, then and there excepted, and its exception was duly noted and allowed by the Court, and is here now sealed accordingly.

13.

If the evidence fails to convince you beyond a reasonable doubt that defendant acted wilfully, as wilfully has been defined to you, you will find the defendant not guilty.

The Court refused to give said instruction No. 13 and while the Jury was still at the bar of the Court, defendant, Oglesby Grocery Company, then and there excepted, and its exception was duly noted and allowed by the Court, and is here now sealed accordingly.

And thereupon, and after the presentation of said requests, numbers 1 to 13 inclusive, and after the argument of Counsel, the Court proceeded to charge the Jury.

108 And thereupon before the Jury retired and while it was still at the bar of the Court, the defendant, Oglesby Grocery Company, then and there excepted to the following instructions given by the Court to the Jury, to wit:

The Government says that a just and reasonable rate had been fixed by the President through the agency of the Attorney General and also through the agency of the Fair Price Commission at Atlanta. Evidence has been introduced as to what these agencies of the President had determined to be a fair and just rate in handling sugar at wholesale. That evidence has been admitted before you for what you think it is worth. It is not conclusive; it is not a judgment; the Oglesby Grocery Company was never called before either one to have a hearing about it so that a trial could be had to fix the thing. It is admitted only as prima facie evidence as to what the Attorney General and the Fair Price Commission decided was just and reasonable.

And said exception was then and there duly entered and allowed by the Court.

And thereupon before the Jury retired and while it was still at the bar of the Court, the defendant, Oglesby Grocery Company then and there excepted to the following instructions given to the Jury, to-wit:

This Section 5 of the Act authorizes the President, through such agencies, to determine what is a just and reasonable profit, the language is not "a just and reasonable rate," and it is a little different. Just and reasonable profit,—that word "profit" might have a good many significations in the minds of different people. One man might say that profit is the difference between what a commodity cost and what it is sold for. That is what I have told you that the rate and charge was. Another man might think that ought not to be considered profit but that profit is only what a man gets clear, after

paying all his expenses of every sort in connection with it. Here it becomes important, therefore, in considering the finding, both of the Attorney General and the Fair Price Commission, to know what they thought profit was, and in looking at all the circumstances: 109 they dealt with; you have to know that in order to tell how much the compensation ought to be and what they found.

And said exception was then and there duly entered and allowed by the Court.

And ther-upon before the Jury retired and while it was still at the bar of the Court, the defendant, Oglesby Grocery Company, then and there excepted to the following instructions given by the Court to the Jury, to-wit:

The word "wilful" was read to you from the statute. There has been some discussion about that. Wilful means a deliberate purpose to do the thing that was done. It means that there wasn't any mistake about it or any accident that got a man into something he did not intend. It does not mean in this connection that the defendant knew or believed that what he did was just and reasonable. If in point of fact the charge made was unjust and unreasonable, and unjust and unreasonable beyond a reasonable doubt in your opinion, and they deliberately made that charge wilfully, then there would be a wilful exaction of an unjust and unreasonable charge within the meaning of this statute. I call your attention to that meaning of the word "wilful" because there has been some discussion about it. Whether or not there was any accident or misfortune or misunderstanding that might render the making of an unjust and unreasonable charge not wilful under the circumstances in this case, it is for you to say, or whether the defendant did make wilfully an unjust and unreasonable rate or charge, as set out in the charge. If so they are liable to be convicted under this indictment, and if not they are not liable to be convicted, of course.

And said exception was then and there duly entered and allowed by the Court with the explanation as follows:

That is to say that it must have been done with a bad purpose, with the purpose to do wrong and without reasonable grounds to believe or know it to be unlawful. I intended to say what I said.

Said March term 1920 of said Court has not yet adjourned 110 and within said term and in furtherance of justice, and that right may be done, the defendant, Oglesby Grocery Company presents the foregoing as its bill of exceptions in this case, and prays that same may be certified and allowed and signed and served as provided by law.

EDGAR WATKINS,
(WATKINS, RUSSELL & ASBILL,)

Attorneys for Defendant Oglesby Grocery Company.

The foregoing Bill of Exceptions is correct in all respects, and is hereby approved, allowed, and settled, and made a part of the record herein in open Court.

This 30 day of June 1920.

SAM'L H. SIBLEY,
United States Judge.

Filed in Clerk's Office June 30, 1920. O. C. Fuller, Clerk, by C. A. McGrew, Deputy Clerk.

111 In the Supreme Court of the United States.

THE UNITED STATES

v.

OGLESBY GROCERY COMPANY.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Honorable the Judge of the United States District Court for the Northern District of Georgia, Northern Division:

Because in the record and proceedings, as also in the rendition of the verdict and judgment between the Oglesby Grocery Company, a Corporation, Plaintiff in Error, and the United States of America, Defendant in Error, wherein the constitutionality of a law of the United States was drawn in question, and wherein it was contended that the law under which said proceedings were had was violative of the Constitution of the United States and immunity was claimed under said constitution and the decision was against the title, right, privilege and immunity especially set up and claimed under said Constitution; manifest error hath happened to the great damage of the said Oglesby Grocery Company, a Corporation, as by its complaint appears. We being willing that error if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you if judgment be therein given that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this Writ, so that you have same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States

112 should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States the 30 day of June, in the year of our Lord One Thousand Nine Hundred and Twenty.

[Seal U. S. District Court, N. D. Georgia.]

O. C. FULLER,

*Clerk United States District Court,
Northern District of Georgia.*

Writ of Error granted, this 30 day of June, 1920, and supersedeas bond fixed at \$4,000.00.

SAM'L H. SIBLEY,

*Judge United States District Court,
Northern District of Georgia.*

Filed in Clerk's Office Jun. 30, 1920. O. C. Fuller, Clerk, by C. A. McGrew, Deputy. Recorded in Minutes, No. 44, Page 635.

113 In the United States District Court for the Northern District of Georgia, Northern Division.

THE UNITED STATES

VS.

OGLESBY GROCERY COMPANY.

UNITED STATES OF AMERICA, *ss.*

To the United States and Hooper Alexander, United States District Attorney:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington in the District of Columbia within 30 days from date hereof pursuant to a Writ of Error filed in the Clerk's Office of the United — District Court, Northern District of Georgia wherein Oglesby Grocery Company is Plaintiff in Error and the United States is Defendant in Error, to show cause if any there be why the verdict and judgment rendered against said Plaintiff in Error as in said Writ of Error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel H. Sibley, judge of the United States District Court for the Northern District of Georgia this 30 day of June in the year of our Lord Nineteen Hundred and Twenty.

[Seal U. S. District Court, N. D. Georgia.]

SAM'L H. SIBLEY,
*Judge United States District Court,
Northern District of Georgia.*

114 Due and legal service of the foregoing citation, the petition for Writ of Error, the assignment of errors, the Writ of Error, and all other and further proceedings connected with the Writ of Error from the United States District Court for the Northern District of Georgia to the Supreme Court of the United States acknowledged, and all other and further service and notice of any kind or character whatsoever waived.

This 30 day of June, 1920.

WM. L. FRIERSON,
Solicitor General.

Filed in Clerk's Office, Jul- 10, 1920. O. C. Fuller, Clerk, by C. A. McGrew, Deputy.

115

Præcipe.

To the Clerk of said Court:

Oglesby Grocery Company, Plaintiff in Error, directs you to forward to the Supreme Court of the United States with the Writ of Error the parts of the record which it thinks necessary for the consideration of the errors assigned:

1. The Indictment herein.
2. The Demurrer to the Indictment filed by Plaintiff in error.
3. The opinion and judgment of the Court on the Demurrer.
4. The plea of not guilty.
5. The Verdict and Judgment thereon.
6. Petition for Writ of Error.
7. Assignment of Errors.
8. Bond.
9. Bill of Exceptions.
10. Order Allowing Writ of Error.
11. Writ of Error.
12. Citation in Error and acceptance of service thereon.
13. This designation of parts of the record with service thereon.
14. Clerk's Certificate.

This 30 day of June, 1920.

EDGAR WATKINS,
(WATKINS, RUSSELL & ASBILL,)
Attorney for Oglesby Grocery Company,
Plaintiff in Error.

4th Nat'l Bank Bldg., Atlanta, Ga.

116 Service and copy of the above and foregoing designation of the record, accepted, and all other or further notice and service waived and it is agreed that said designation states all the facts of the record that is necessary to a clear understanding of the error complained of. June 30, 1920.

HOOPER ALEXANDER,
United States District Attorney.

Filed in Clerk's Office, June 30, 1920. O. C. Fuller, Clerk, by C. A. McGrew, Deputy Clerk.

117

Clerk's Certificate.

UNITED STATES OF AMERICA,
Northern District of Georgia,
Northern Division:

I, Olin C. Fuller, Clerk of the District Court of the United States for the Northern District of Georgia, do hereby certify that the foregoing and attached 116 pages of printing and writing contains a true copy of the record, Writ of Error, Assignment of Errors, Bill of Exceptions and all proceedings in the case of Oglesby Grocery Company, a Corporation, Plaintiff in Error, versus The United States, Defendant in Error, being No. 3754 Criminal, as specified in the Præcipe of counsel therein as fully as the same remains of record and on file in my office at Atlanta, Georgia, except that the Original Writ of Error and the Original Citation with Acknowledgement of Service thereon are included therein in the stead of a copy thereof.

In testimony whereof I hereunto set my hand and the seal of said District Court of Atlanta, Georgia, this 16th day of July, A. D. 1920.

[Seal U. S. District Court, N. D. Georgia.]

OLIN C. FULLER,
Clerk United States District Court
for the Northern District of Georgia.

Endorsed on cover: File No. 27,814. N. Georgia D. C. U. S. Term No. 457. Oglesby Grocery Company, plaintiff in error, vs. The United States of America. Filed July 26th, 1920. File No. 27,814.

(1961)